

Exhibit 3 Revised*

Transcript excerpts of the 1-17 Prehearing. Havens statements herein called “**H2**.”

This Exhibit 3 Revision* has the same content as Exhibit 3 already uploaded earlier today on EFCS.

But this Revision has items below highlighted and noted for certain purposes of this §1.301(a) Appeal.

- W. Havens

* File name "Rev. Ex. H2..."

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

IN THE MATTER OF:	:	EB Docket No.
	:	11-71
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC	:	File No.
	:	EB-09-IH-1751
Participant in Auction No. 61:	:	
and Licensee of Various	:	FRN:
Authorizations in the	:	0013587779
Wireless Radio Services	:	
	:	Application
Applicant for Modification of:	:	File Nos.
Various Authorizations in the:	:	0004030479
Wireless Radio Services	:	0004144435
	:	0004193028
Applicant with ENCANA OIL AND:	:	0004193328
GAS (USA), INC.; DUQUESNE	:	0004354053
LIGHT COMPANY, DCP MIDSTREAM,	:	0004309872
LP; JACKSON COUNTY RURAL	:	0004310060
MEMBERSHIP ELECTRIC	:	0004314903
COOPERATIVE; PUGET SOUND	:	0004315013
ENERGY, INC.; ENBRIDGE ENERGY:	:	0004430505
COMPANY, INC.; INTERSTATE	:	0004417199
POWER AND LIGHT COMPANY;	:	0004419431
WISCONSIN POWER AND LIGHT	:	0004422320
COMPANY; DIXIE ELECTRIC	:	0004422329
MEMBERSHIP CORPORATION, INC.;	:	0004507921
ATLAS PIPELINE-MID CONTINENT,	:	0004153701
LLC; and SOUTHERN CALIFORNIA	:	0004526264
REGIONAL RAIL AUTHORITY	:	0004604962
	:	
For Commission Consent to	:	
the Assignment of Various	:	
Authorizations in the	:	
Wireless Radio Services	:	Volume 8
	:	

Friday, January 17, 2014

FCC Headquarters
445 12th Street, S.W.
Washington, D.C.

10:30 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

APPEARANCES:On Behalf of Maritime Communications/
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On behalf of Technology Law Group and Neil Ende:

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On behalf of Warren Havens:

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ALSO PRESENT:

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Communications Commission,
Attorney-Advisor, Office of
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*Participating via teleconference

P-R-O-C-E-E-D-I-N-G-S

(10:36 a.m.)

JUDGE SIPPEL: Please be seated. Does everybody have a seat? Does anybody care whether the door is open or not? It may be a little bit more comfortable here.

Okay, Mr. Havens, are you with us?

MR. HAVENS: I am, thank you.

JUDGE SIPPEL: Okay. I just want to say good morning. This is a pre-hearing conference in the matter of Maritime Communications, et. al, EB Docket 11-71.

There has been some confusion perhaps on -- well, it makes no difference on whose part. But this is not a hearing. This is just a conference. There is going to be no testimony taken. Questions will be asked and answers are expected but it is not going to be testimonial. That is point number one.

Point number two is I am going to have to take attendance. And let me start the easy way and start with counsel for Maritime.

MR. KELLER: Bob Keller here, Your Honor.

JUDGE SIPPEL: And on behalf of the Bureau.

MS. KANE: Pamela Kane.

MR. CARTER: Brian Carter.

JUDGE SIPPEL: Mr. Carter, okay. Anybody else in the Bureau?

1 Okay, I'm going to start then. Let me start
2 with counsel for Mr. Ende. I mean all of you are counsel
3 for the Attorneys in this case, I believe.

4 MS. KANE: Correct.

5 JUDGE SIPPEL: Why don't we start with Mr. Ende?

6 MR. LONGSTRETH: Okay. Well, Mr. Ende is here.

7 JUDGE SIPPEL: Mr. Ende, good morning.

8 MR. LONGSTRETH: I'm sorry?

9 MR. ENDE: I'm Neal Ende. I'm managing partner
10 of Technology Law Group.

11 JUDGE SIPPEL: Okay, thank you.

12 MR. LONGSTRETH: And Your Honor, it looks like
13 the convention is that it is okay to sit down while ad-
14 dressing Your Honor.

15 JUDGE SIPPEL: Yes, that's fine. That's cer-
16 tainly fine.

17 MR. LONGSTRETH: And I'm John Longstreth with
18 the law firm of K&L Gates.

19 JUDGE SIPPEL: If I stand up, you have got a
20 problem.

21 (Laughter.)

22 MR. LONGSTRETH: Okay, I got it.

23 JUDGE SIPPEL: Go ahead.

24 MR. LONGSTRETH: Thanks. John Longstreth from
25 the law firm of K&L Gates, representing Mr. Ende and Tech-

1nology Law Group. And then my partner, Martin Stern is
2also here.

3 JUDGE SIPPEL: Okay, I am familiar with your
4letter. All right? I saw your letter.

5 MR. LONGSTRETH: Okay, thank you.

6 JUDGE SIPPEL: Okay, well what about who repre-
7sents Mr. Chen?

8 MS. NORWINSKI: I do, Your Honor.

9 JUDGE SIPPEL: Mr. Chen?

10 MR. CHEN: James Ming Chen --

11 JUDGE SIPPEL: You are here by my direction.

12 (Laughter.)

13 MR. CHEN: Yes.

14 JUDGE SIPPEL: Thank you.

15 MS. NORWINSKI: Your Honor, --

16 JUDGE SIPPEL: Ma'am?

17 MS. NORWINSKI: My name is Evelina Norwinski. I
18am with the law firm of Arnold and Porter. With me are my
19colleagues Dan Stuart and Brett Farley, and we represent
20Mr. Chen.

21 JUDGE SIPPEL: All right. I might lose these
22names a bit. So, please bear with me but I am trying the
23best I can.

24 And who would be the next one?

25 MS. WAID: That would be us, Your Honor. My

1 name is Nicole Wade with Roetzel and Andress and I repre-
2 sent Danny Ruhl and Tim Anzenberger from Copeland and Cook.

3 JUDGE SIPPEL: They are all the way down from
4 Mississippi?

5 MS. WAID: They are.

6 JUDGE SIPPEL: Do you like the weather here?

7 MS. WAID: No.

8 (Laughter.)

9 MS. WAID: Not at all.

10 JUDGE SIPPEL: Wait until you see it gets worse.
11 Does that cover everybody, then? Sir.

12 MR. CATALANO: Al Catalano here for Pinnacle
13 Wireless.

14 JUDGE SIPPEL: Okay. That is fine. You are
15 making an appearance on behalf of Pinnacle.

16 Obviously, I am focusing on the matter at hand
17 but, of course, you can participate as you see fit.

18 Mr. Havens?

19 MR. HAVENS: Yes, sir?

20 JUDGE SIPPEL: Are you being represented by
21 anybody here?

22 MR. HAVENS: What do you mean?

23 JUDGE SIPPEL: Well, I mean do you have a lawyer
24 who is representing you at today's conference.

25 MR. HAVENS: I am attending because I was or-

1dered to attend. But I was not ordered to do anything but
2attend. So, I don't intend to do anything, other than
3attend.

4 JUDGE SIPPEL: Well, are there any lawyers here
5who represent you?

6 MR. HAVENS: That is my answer. I am here to
7attend. But in terms of what attorneys do what for me
8otherwise, that is not an issue under the order.

9 JUDGE SIPPEL: I can try and ask this one more
10time. Are you being represented by counsel today?

11 MR. HAVENS: No.

12 JUDGE SIPPEL: Okay. Okay, now Mr. Chen, you
13are the last one that I have on my time list as still being
14representative -- still representing Mr. Havens. Is that
15correct?

16 MR. CHEN: That is correct.

17 JUDGE SIPPEL: Are you here today in any capac-
18ity to represent him?

19 MR. CHEN: No, I am not.

20 JUDGE SIPPEL: You are not, okay. So then let
21me just focus on that a little bit more. What is the
22nature of your representation? Let me start with the
23nature of it. Well, we'll just go. You two go together.

24 MS. NORWINSKI: Your Honor, if I could interrupt
25for just a minute.

1 JUDGE SIPPEL: Yes.

2 MS. NORWINSKI: It is my understanding that Mr.
3 Havens is asserting a privilege over everything that has
4 not already been disclosed to you in Mr. Chen's Notice of
5 Limited Appearance.

6 We are taking your questions very seriously and
7 would like to be able to answer. But given the assertion
8 of privilege, Mr. Chen has an obligation under Ethics Rules
9 1.6 to honor that privilege until there is a final determi-
10 nation made by an appellate court that the information
11 either is not privileged or needs to be disclosed.

12 I think if I could ask Mr. Havens if he is
13 asserting a privilege over the answer to that question.

14 JUDGE SIPPEL: Well what privilege would you be
15 concerned with?

Ms. Norwinski was not speaking for me. I asserted all attorney-client relation and communication protection or privilege rights, including attorney-client privilege, work product doctrine privilege, broader rule 1.6 confidentiality, and any others that apply including: The government has no right to search and seize, or inquire, when it has no basis in law to do so, and does not state any basis. I defined all of these as the "Privileges" in same Motion.

MS. NORWINSKI: It would be attorney-client privilege. Mr. Havens has said in his filings to you that he is asserting attorney-client privilege over all of the responses to the questions that you have indicated you are going to pose in your January 8th order.

The other issue here is, in addition to attorney-client privileges, some of this information may be considered secrets by Mr. Havens, which is just confidential information that he does not want opposing counsel to hear. And under Rule 1.6, Mr. Chen, then, is obligated to

1 keep Mr. Havens' confidences and secrets until such time as
2 there is a final order that says he needs to respond.

3 If I can respectfully request, Your Honor, we
4 would like to provide information that Your Honor needs to
5 move forward in this case. If we could do it in an in-
6 camera hearing, where opposing counsel is present, I think
7 there would be a bit more leeway to discuss the privilege
8 and to discuss other information that may not be privileged
9 but that Mr. Havens may want to keep confidential for
10 tactical reasons in these proceedings.

11 JUDGE SIPPEL: Well, in-camera, at this point is
12 not in the cards. That is not on my agenda at all.

13 MS. NORWINSKI: I understand.

14 JUDGE SIPPEL: But let me, Mr. Havens -- well,
15 finish with Mr. Havens.

16 Did you hear the question, Mr. Havens?

17 MR. HAVENS: The question from the --

18 JUDGE SIPPEL: From counsel.

19 MR. HAVENS: I'm sorry, I didn't get the name of
20 the attorney. So, the question the attorney posed to me?

21 JUDGE SIPPEL: State your name again, ma'am, for
22 Mr. Havens.

23 MS. NORWINSKI: Evelina Norwinski from Arnold
24 and Porter. Mr. Havens, I am representing James Chen. And
25 as I understand the question, Your Honor, you are asking

ALJ went into this with an "agenda" but it was not disclosed- no explanation of the FCC or other law by which he can do this inquiry and call this Prehearing.

1 Mr. Chen the scope of his representation for Mr. Havens.

2 JUDGE SIPPEL: Correct.

3 MS. NORWINSKI: And Mr. Havens, do you assert
4 the privilege over Mr. Chen's response?

5 MR. HAVENS: Yes, I submitted a motion and a
6 letter on Wednesday. And I had read the Order and I have
7 asserted attorney-client relation and communication privi-
8 leges. So, the answer is yes.

9 JUDGE SIPPEL: I hear your answer. But I am now
10 addressing Ms. Norwinski, her points.

This hearing was about the specific question-demands in Order 14M-1.

The answer I gave in my Motion regarding that Order, before this Prehearing, was entirely clear.

There was no lack of clarity as to the asked and answered demands-questions.

11 My understanding is, and the Commission is going
12 to look for this, I think, they want a specific question
13 asked. And refusal of answer, based on a privilege, and
14 then I rule on that so that the Commission has a record to
15 decide whether or not the privilege is appropriately as-
16 serted or not. They can't take this up on a blank slate.

17 And you are nodding that you understand that.

18 MS. NORWINSKI: That's correct.

19 JUDGE SIPPEL: You are kind of leaving me in a
20 bind here. I intend to ask questions, specific questions.
21 But I don't intend to go into matters which are attorney-
22 client. I understand that. The attorney-client privilege
23 has to do with a communication for purposes of obtaining
24 legal assistance or legal advice. And I am not asking
25 that.

No, the asserted "Privileges" were not only attorney-client privilege.

1 I am simply asking who, or in Mr. Chen's case,
2 what was the scope of his engagement. What was he supposed
3 to do for, I will start with Mr. Havens. And I think that
4 certainly I am entitled to an answer to that.

5 MS. NORWINSKI: Your Honor, as Mr. Havens said,
6 he has asserted privilege over the answer. I believe there
7 is a colorable claim of privilege here as to what Mr. Chen
8 was assisting Mr. Havens with.

9 Mr. Chen has disclosed in his limited appearance
10 the dates with which he was working with Mr. Havens. And
11 also that he was assisting Mr. Havens in this particular
12 matter.

13 Beyond that, Mr. Havens has asserted privilege.
14 I believe there is a colorable claim of privilege here.

15 Mr. Chen and I can't make the determination,
16 ethically, as to how far the privilege goes, in these gray
17 areas what might be privilege what might not be privileged.

18 In an in-camera proceeding, I think we could
19 discuss a little more why some of this information might be
20 privileged. But in doing so, I think we are going to
21 disadvantage Mr. Havens in front of opposing counsel in
22 this matter, by discussing why the scope of Mr. Chen's
23 assistance to Mr. Havens, and in particular what issues Mr.
24 Chen worked on might be privileged.

25 So, we will proceed anyway, Your Honor. I

1 appreciate the difficulty of this and, believe me, we have
2 spent many, many hours discussing this internally, in an
3 effort to be helpful to Your Honor, while still honoring
4 Mr. Chen's ethical obligations and his obligations to --
5 his attorney-client privilege obligations to Mr. Havens.

6 JUDGE SIPPEL: Who is paying his fees?

7 MS. NORWINSKI: Who is paying whose fees?

8 JUDGE SIPPEL: Paying Mr. Chen's fees for these
9 hours of work that you are doing.

10 MS. NORWINSKI: No one is paying Mr. Chen's fees
11 for these hours of work.

12 JUDGE SIPPEL: You are doing this pro bono?

13 MS. NORWINSKI: Are you asking who is paying my
14 fees?

15 JUDGE SIPPEL: Yes, sir -- ma'am. I'm sorry.

16 (Laughter.)

17 MS. NORWINSKI: I've been called worse. That's
18 absolutely fine, Your Honor.

19 JUDGE SIPPEL: Okay.

20 MS. NORWINSKI: Your Honor, Arnold and Porter is
21 doing this on an accommodation basis for Mr. Chen. So,
22 there are no fees in this matter.

23 JUDGE SIPPEL: Okay, very good.

24 Now, I must have somehow or other fallen asleep
25 in ethics class or something when it comes to the privi-

1lege. I don't know any other way to read cases, other than
2the fact that there has been a question asked that appears
3to be -- that counsel objects to on the basis of the privi-
4lege or whether it is only the client that can assert the
5privilege. And there is a ruling on it. I don't know any
6colorable right cases. Do you have one, colorable right
7for an attorney-client privilege?

8MS. NORWINSKI: Are you asking me --

9JUDGE SIPPEL: Yes, ma'am.

10MS. NORWINSKI: -- how the information that you
11are asking for is privileged?

12JUDGE SIPPEL: No, I am asking you if there is
13such a thing as a colorable right privilege. I know that
14there is an attorney-client privilege but what are we
15coloring here?

16MS. NORWINSKI: Your Honor, maybe I misspoke but
17I said that there was a colorable argument that there is an
18attorney-client --

19JUDGE SIPPEL: No, you didn't misspeak. You
20didn't misspeak. I am mishearing.

21MS. NORWINSKI: Okay.

22JUDGE SIPPEL: That's okay. I didn't mean to
23interrupt. Go ahead. Please explain it to me, though.

24MS. NORWINSKI: Your Honor, Mr. Havens has
25asserted privilege over what Mr. Chen would say in response

1 to your question. I believe that Mr. Havens' claim of
2 privilege is credible here. And if this -- you might feel
3 differently. The full Commission might feel differently
4 but we believe it is a credible assertion of privilege.
5 Given that, Mr. Chen is not at liberty then to answer your
6 question, we believe, until Mr. Havens has exhausted all of
7 his rights of appeal on this issue of privilege.

8 We are getting this from Rule 1.6. There is a
9 Note 28 in Rule 1.6. And Note 28, Your Honor, says that an
10 attorney may reveal confidences of a client under court
11 order but that a lawyer ordered by a court to disclose
12 client confidences or secrets should not comply with the
13 order until the lawyer has personally made every reasonable
14 effort to appeal the order or has notified the client of
15 the order and given the client the opportunity to challenge
16 it.

17 As Mr. Havens has stated in his filings, he has
18 already sought interlocutory appeal of Your Honor's direc-
19 tion to these counsel to answer questions because he be-
20 lieves all this information is privileged. And I expect we
21 have not heard the end of Mr. Havens' appeals on this
22 matter.

23 JUDGE SIPPEL: But you know that I mean issue
24 has to be drawn before you can file an appeal. This is
25 what is driving me crazy here. You say confidences or

See above margin
comment. 14M-1
posed specific
demands-
questions, and
Havens already
responded with
clarity before this
Prehearing.

No, 14M-2 §§ 4-7 had a long list of demands, and as to the "scope" - it was stated in the assisting counsels' respective Notices of limited appearance.

1 secrets or the possibility of disclosing confidences or
2 secrets but those are the magic words that you use. There
3 are no questions that are going to be asked about a confi-
4 dence or a secret. We are only asking about scope of
5 engagement. Good Lord, that is a common -- in fact that
6 question has to be asked before you can even determine
7 whether there is -- to make a ruling on an attorney-client
8 privilege. I have to know what the scope of the engagement
9 is.

10 MS. NORWINSKI: And Your Honor, I can say, as
11 Mr. Chen has said in his Notice of Limited Appearance, that
12 the scope of his engagement began in November of 2012 and
13 continues today.

14 JUDGE SIPPEL: In 2012? November, 2012.

15 MS. NORWINSKI: Correct, prior to the time he
16 entered an appearance in this case. And that he has ad-
17 vised Mr. Havens, with respect to this particular matter,
18 with respect to 11-71.

19 Beyond that, Mr. Havens says that any informa-
20 tion Mr. Chen might disclose he considers privileged.

21 I understand where you are coming from, Your
22 Honor, that you believe that the question you are asking
23 and the response is not privileged. I think that that is
24 where there is a debatable issue about whether this is
25 privileged or not.

See above. Judge made clear at start of this Prehearing that he had an "agenda" and it did not permit any such in-camera discussion, excluding Havens's competitors and adversaries. The Judge invited these parties into this inquiry and Ordered them to attend this Prehearing in 14M-1.

1 Again, if we were in-camera, I believe we could
2 explain a little bit more about why this might either be --
3 the answer might be privileged or the answer might be
4 considered secret under the definition of secret in Rule
5 1.6. And a secret is information -- I don't mean to inter-
6 rupt you.

7 JUDGE SIPPEL: No, go right ahead, please. I
8 want to hear it.

9 MS. NORWINSKI: Okay. A secret is information
10 that either the client wants to be held inviolate or the
11 disclosure of which could disadvantage the client.

12 And again, I can't tell you how that might
13 disadvantage the client because merely by telling you, I am
14 giving indications to Mr. Havens' adversaries in this
15 matter.

16 JUDGE SIPPEL: Well, they are not going to pay
17 attention to that.

18 (Laughter.)

19 JUDGE SIPPEL: Now, you say the disclosure of
20 the scope of his engagement could somehow or other disad-
21 vantage him in some way?

22 MS. NORWINSKI: Mr. Havens in some way, yes.

23 JUDGE SIPPEL: All right, Mr. Havens.

24 MS. NORWINSKI: Yes, not Mr. Chen.

25 JUDGE SIPPEL: Not Mr. Chen but Mr. Havens.

Jokes are revealing. But the fact is the Judge paid and pays no attention to that, and that, itself, is in part why Havens will not volunteer confidential information to this ALJ, in the circumstances at issue here.

1 MS. NORWINSKI: Correct.

2 JUDGE SIPPEL: So, Mr. Chen doesn't care about
3 disclosing the scope of the engagement. He is not worried
4 about what he was doing.

5 MS. NORWINSKI: No, he is not. And I can make a
6 representation to Your Honor that we don't believe there
7 has been any inappropriate conduct by Mr. Chen here but we
8 are in a position of not being able to fully explain to you
9 all of the circumstances because of Mr. Havens' claim of
10 privilege and now Mr. Chen's ethical obligation to maintain
11 the confidences of Mr. Havens.

Havens objected, in a responsive filing, to parts of this letter. Chen's counsel had no authority from Havens to present this to the ALJ, especially when she stated that she could not reveal such matters due to Havens' assertion of privilege.

No one ever asked me about an in-camera presentation, and I have not researched it, and have made no response to it.

In any case, the Judge said that is not in his "agenda," see above.

I sense frustration and we are as frustrated as you, Your Honor. Mr. Longstreth's letter to you suggested a couple of ways forward and we do believe that either letting this privilege issue go to the full Commission or perhaps an in-camera hearing with Mr. Havens the attorneys that are here today could go a long ways toward progressing on this issue, which is a bit of a side issue to the substance of this matter.

JUDGE SIPPEL: Well okay, I am satisfied now that Mr. Chen was not representing in connection with gun
22 running or something like that where he could get in trou-
23 ble.

24 (Laughter.)

25 JUDGE SIPPEL: But what good is it going to do

1 the Commission to send that information up to it? What
2 more are you going to tell the Commission -- is Mr. Havens
3 going tell the Commission that they are not going to tell
4 me -- he is not going to tell me in a public context? The
5 Commission isn't going to meet with you in-camera.

6 MS. NORWINSKI: Your Honor, is there a possibil-
7 ity for us to submit filings under seal with the Commis-
8 sion?

9 JUDGE SIPPEL: Filings under seal? Well, there
10 is such a procedure but there has to be some purpose to do
11 that. I mean, you can always file anything you want in an
12 envelope and seal it up and file it.

13 MS. NORWINSKI: Yes, and the purpose is that
14 once the information that would lead to a meaningful deci-
15 sion on privilege is in the public domain, it is out of the
16 bag and the harm has been done already.

17 JUDGE SIPPEL: Even the information about the
18 scope of the engagement?

No. The "Scope"
was presented by
Chen (and other
assisting
counsel), in
language they
chose (Havens
did not direct
that, or ratify, and
Havens asserted
certain objections
to it).

19 MS. NORWINSKI: Your Honor, we are in a diffi-
20 cult situation here because Mr. Havens is claiming that
21 this is privileged or the information could be detrimental
22 to him. And ethically, we are bound to comply with that
23 until we get an order from a higher court.

24 And we have given a lot of thought to how best
25 to proceed with this so that we can get to -- we can give

1 information to you that will help you in your proceedings.
2 And again, we would ask for an in-camera proceeding. I
3 think it will allow us to give you a little more informa-
4 tion as to why this is either privileged or potentially
5 harmful to Mr. Havens' interest here.

6 JUDGE SIPPEL: The only potential -- the only
7 damage to Mr. Havens' interest that I can see by disclosing
8 that information is that he might lose the assertion of the
9 privilege. He might lose -- a ruling denying the assertion
10 of the privilege. That is the only thing that could possi-
11 bly be at risk. There is not any information I am asking
12 for. Hello!

13 Let me review -- let me go down to some basics.
14 Just let me review to you the key elements of asserting the
15 attorney-client privilege.

16 There has to be the existence of an attorney-
17 client relationship. So, that is admitted. He admits that
18 relationship.

19 MS. NORWINSKI: Correct.

20 JUDGE SIPPEL: There has to be a communication
21 from the client to his or her attorney. That exists. That
22 means Mr. Havens and Mr. Chen. And we are not asking
23 anything about that. The communication is legally related,
24 i.e., it is for the purpose of obtaining legal advice and
25 there is an expectation of confidentiality.

But in his ruling, the ALJ contradicts what he just admits here!

This is Alice in Wonderland court.

First the verdict (he has an "agenda" going into this, and has no FCC or other law for the demands in 14M-1 to begin with), then the hearing. And first the admission or recognition by the court, and then its own rejection of that at the end of the mock trial.

1 So, all those elements are there. But he won't
2 admit to or you are unable to disclose exactly what the
3 client relationship was, which is the first thing that I
4 have to determine under that setting.

5 MS. NORWINSKI: Yes and Your Honor, as has been
6 disclosed, Mr. Chen did have an attorney-client relation-
7 ship with Mr. Havens beginning in November of 2012, advis-
8 ing him on issues in this particular matter.

9 JUDGE SIPPEL: Is that the scope of his repre-
10 sentation?

11 MS. NORWINSKI: Yes, I would say that is the
12 scope of his representation. Now beyond that, the particu-
13 lars of what advised on and when, we don't want to get
14 into. So if that answer --

15 JUDGE SIPPEL: I'm not asking that.

16 MS. NORWINSKI: Okay.

17 JUDGE SIPPEL: I am not asking what he advised
18 him. Yes, I have questions on what he advised on. That is
19 only the subject matter of the advice. I am not asking
20 what advice he gave or he has given or what disclosures
21 were made by the client in order to initiate that advice.
22 And again, we are back to square one now. You
23 are really not letting me do my job.

24 MS. NORWINSKI: I'm sorry, Your Honor. This is
25 -- we are trying to be helpful here but feel very con-

False: See 14M-1
§§ 4-7 demands.

1strained by the ethical rules and Mr. Havens' assertion of
2the privilege.

3 If what you are after by your question what is
4the scope of his representation, I can say --

This part of the
record appears lost-
not taken down.

5 (Simultaneous speaking.)

6 MS. NORWINSKI: Yes.

7 JUDGE SIPPEL: Oh, I have that now. But I am
8going a little -- I want to go a step further and I want to
9ask him with respect to a particular document that is

What is
admitted does
not have to be
asked and
answered,
again.

10admittedly was constructed in part or at least was advised
11in part by Mr. Chen just what aspect he participated in.
12That's all. Not to get anything into advice.

13 And you are saying that that is going to somehow
14-- now the cat's out of the bag. He represents the man and
15we know that it is not anything nefarious and yet we can't
16go any further with this because of the possibility that
17some damage is going to be done to Mr. Havens.

18 You haven't convinced me and I guess maybe it
19doesn't matter if you convinced me or not. This is the way
20it is going to be.

21 MS. NORWINSKI: Yes, Your Honor, given Mr.
22Havens' assertion of the privilege. And if you were to ask
23anyone in this room whether the answer we would give you as
24to specifically what Mr. Chen worked on was privileged or
25not, you might come up with different answers. But it is

1 not my decision as to whether Mr. Chen helped with certain
2 filings. That is up to you to decide. It is also up to
3 the Commission to decide. We can't break the privilege or
4 violate the privileged under Rule 1.6 until we get a final
5 order in this proceeding as to what is or is not privi-
6 leged.

7 We have to abide by Mr. Havens' claim of privi-
8 lege at this point, which, as I said, there is a colorable
9 argument for privilege which we would be happy to discuss
10 further with you in-camera but I don't believe we can
11 discuss it with full participation here in this hearing.

12 JUDGE SIPPEL: You can see the color but nobody
13 else can see the color into you go in-camera and explain
14 what the color is.

15 MS. NORWINSKI: I believe that is right, Your
16 Honor. And again --

17 JUDGE SIPPEL: That is not very artful but that
18 is basically what it is.

19 MS. NORWINSKI: Yes. And again, I apologize for
20 the frustration of this. As I said, we have spent many,
21 many hours trying to work through this and navigate the
22 shoals of the conflicting orders and obligations that Mr.
23 Chen is under here.

24 JUDGE SIPPEL: Well, let me ask you this. This
25 is hours of anguish and careful thinking, et cetera, et

Norwinski was
apologizing for her
client, but not for
Havens. I assert that
the ALJ should
apologize since
14M-1 has no basis in
any relevant law, and
the Judge gave none
therein, or at this
Prehearing. This is
causing me damages,
and I may pursue
those. It also damages
this hearing.

1 cetera. Was Mr. Havens involved in that program?

2 MS. NORWINSKI: No, he was not.

3 JUDGE SIPPEL: Just you and Mr. Chen?

4 MS. NORWINSKI: Yes and --

5 JUDGE SIPPEL: And Mr. Chen was able to -- yes,
6 over there?

7 MS. NORWINSKI: We have also conferred -- I have
8 also conferred with counsel for the other attorneys.

9 JUDGE SIPPEL: Well, that would make sense.

10 MR. LONGSTRETH: And I guess the other thing I
11 would say is with respect to Mr. Havens --

12 JUDGE SIPPEL: This is -- who is speaking now?

13 MR. LONGSTRETH: I'm sorry. This is John
14 Longstreth for --

15 MR. KELLER: From K&L Gates, for Mr. Ende.

16 MR. LONGSTRETH: Yes, for Mr. Ende.

17 And I don't want to break in but --

18 JUDGE SIPPEL: No, go ahead.

19 MR. LONGSTRETH: With respect to the question if
20 what Your Honor is concerned about is do we have an under-
21 standing of the scope of Mr. Havens' assertions, I think we
22 do have an understanding of the scope of Mr. Havens' asser-
23 tions. He has not been shy about letting anyone know.

24 MS. NORWINSKI: Yes.

25 JUDGE SIPPEL: Well, wait a minute. How did

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WASHINGTON, D.C. 20005-3701

1 that information come to you?

Actually, I filed a Motion and Letter (similar content) responding to 14M-1, and a further letter re Neil Ende's letter regarding 14M-1

2 MR. LONGSTRETH: Well, most recently in the
3 letter that he sent to Your Honor, I believe last night,
4 where he indicated what he considered privileged and not
5 privileged and indicated that many of these matters would,
6 in fact, be considered privileged by him and would disad-
7 vantage him if they were disclosed.

8 JUDGE SIPPEL: Is that in that letter? Is there
9 something in that letter about disadvantaging?

10 MR. LONGSTRETH: Well, --

11 JUDGE SIPPEL: I got the letter. It was ad-
12 dressed to me. I didn't read anything about --

13 MR. LONGSTRETH: Okay, I'm sorry. I may have
14 overstated that. That was implicit to me. I'm sorry.

15 MS. NORWINSKI: And, Your Honor, I do want to
16 clarify. There have been communications with Mr. Havens
17 but we are not advising Mr. Havens on the privilege issue.
18 So, I don't want to misstate that.

19 JUDGE SIPPEL: Well, between Mr. Havens -- wait
20 a minute. Between you, Ms. Norwinski and Mr. Havens.

21 MS. NORWINSKI: I have had one conversation with
22 Mr. Havens and Mr. Chen has had conversations with Mr.
23 Havens but these are not in the context of advising Mr.
24 Havens on the privilege. These are asking whether he is
25 going to assert the privilege.

I do not have to "assert" rights I have, to have the rights. They exist unless I waive them. See my Motion and Letter first responding to 14M-1.

1 JUDGE SIPPEL: And let's see. And Mr. Ende, you
2 are coming out in the same way.

3 MR. ENDE: Yes.

4 JUDGE SIPPEL: Can you answer it, Mr. Ende?

5 MR. ENDE: Yes, sir, although the factual dif-
6 ference is we, that is, I have had no communications with
7 Mr. Havens regarding the issue of privilege. I have been
8 on the receiving end of communications from him asserting
9 the privilege, but I have not had telephonic communications
10 with him about the privilege.

11 Mr. Longstreth did write a letter to him on my
12 behalf but other than that, I have had no communications
13 with him.

14 JUDGE SIPPEL: And would you have the same
15 problem of testifying about whether the scope of your
16 representation would be any different than what Mr. Chen
17 has admitted to?

18 MR. LONGSTRETH: Yes, I mean I think we have
19 come to the same conclusion that the broad scope of the
20 representation, which is that as we disclosed, very similar
21 to what Mr. Chen has disclosed, that we did represent him
22 during a period. And again, another difference between us
23 and Mr. Chen is that Technology Law Group ceased represent-
24 ing him in November, so they had no involvement after
25 November. So, we are just talking about a past period of

The use of
"representation"
is misleading in
this Prehearing
and regarding
14M-1. None of
these assisting
attorneys
represents
Havens in docket
11-71. Only
Chen, for a brief
period in the past,
did that.

1 time --

2 JUDGE SIPPEL: No, my questions were framed with
3 that.

4 MR. LONGSTRETH: Right but within the scope of
5 our representation, the firm did represent and the scope of
6 that representation did extend to this docket.

The actual 14M-1
demands are in
that Order, see ¶¶
4-7.

7 On the other hand, with respect to what specific
8 items he asked us to either advise him or not advise him
9 on, when he asked us for help, when he did not ask us for
10 help -- and I'm sorry, I keep using us but I mean the law
11 firm Mr. Ende is from.

12 JUDGE SIPPEL: Yes, I understand.

It is not
"aggressive" in
any sense, but is
entirely
reasonable
given 14M-1
demands, and
the fact that the
ALJ did not
give in 14M-1
or in response to
Havens's filings
on 14M-1, or at
this Prehearing,
any basis in
FCC or other
law to hold this
inquiry in the
first place.

13 MR. LONGSTRETH: Those have been very directly
14 asserted to us by Mr. Havens as violating a privilege and
15 as disadvantaging him, if we were to disclose that.

16 And so we are in the difficult position of
17 between a client who is making a very aggressive assertion
18 of privilege -- I'm sorry -- a former client who is making
19 a very aggressive assertion of privilege and our desire to
20 try to put this issue to rest which, again, we agree from
21 our perspective really is not a significant issue. But we
22 do not believe we are in the position to provide you the
23 information on that without running into Mr. Havens' very
24 direct and square assertion of a privilege.

25 And on top of that, Mr. Havens' very direct and

1 square assertion that he is going to pursue all available
2 rights that he has, if in fact we are ordered to answer
3 those questions.

4 And we laid out in our letter that you referred
5 to, the same comment that was referred to by Ms. Norwinski.

6 Ms. Norwinski had, again, I think there was an
7 ethical ruling there that says very clearly if an attorney
8 is ordered by a court to disclose the client information,
9 he must not make disclosure until he has given the client
10 an opportunity appeal the order to a higher tribunal. And
11 we believe that is the situation we are in.

12 We have been directed not to disclose this. Mr.
13 Havens has advised us, actually we all have been advised
14 because we have seen the pleading, that he is going to --
15 he advised us he was going to appeal and now he has ap-
16 pealed and that is pending. And we believe that if we
17 disclose the information, Mr. Havens will have the argument
18 that we have, essentially, blown up his appeal in violation
19 of our ethical obligations under this rule. And we do not
20 want to be in the position of being subject to that asser-
21 tion from Mr. Havens.

22 JUDGE SIPPEL: Well, you see the position I am
23 in. What am I going to send to the Commission to rule on?
24 I haven't ruled on anything. I haven't ruled on a darn
25 thing.

1 MR. LONGSTRETH: Well, I mean --

2 MS. NORWINSKI: Your Honor, if I may.

3 JUDGE SIPPEL: I can't even make a living with
4 you folks.

5 MR. LONGSTRETH: Well, Ms. Norwinski is appar-
6 ently not making a living on this case either. We have
7 already found that out.

8 (Laughter.)

9 MR. LONGSTRETH: I object to that.

10 But I mean it seems to me that one thing you
11 could rule on would be you could reject Mr. Havens' asser-
12 tion of the privilege and Mr. Havens could take that up to
13 the Commission. I mean that is, I think, what would hap-
14 pen.

15 MS. NORWINSKI: Your Honor, I have --

16 JUDGE SIPPEL: Well, you say he has already gone
17 up to the Commission.

18 MR. LONGSTRETH: Well, I mean he went up to the
19 Commission when the order came out saying I can tell from
20 the face of this order this is asking for privileged infor-
21 mation. And as you know, he also wanted to not have the
22 hearing occur.

3 JUDGE SIPPEL: This is a conference. It is not
4 a hearing.

5 MR. LONGSTRETH: I'm sorry. I'm sorry that is

See start of this
Preharing- it is not a
"hearing" and there is
no evidence taken,
but it will result in an
Order under APA 5
USC 556, and a
"sanction" under
APA, for which
evidence is needed,
and for which the
FCC, not Havens, has
to produce the
transcript record,
which the ALJ failed
to do, asserting that
Havens had to pay
for the transcript.

1 my fault.

2 -- have the conference occur, the hearing con-
3 ference occur. But now that we are at the conference,
4 presumably at this point, we are going to have the question
5 and answer that we are talking about. But I think his
6 first appeal was that the scope of the order involved
7 privileged information. I would assume that his next
8 appeal, after whatever ruling you make on this conference
9 is that as to the specific questions and answers you have
10 ordered us to answer, those are not privileged.

11 Again, I am speculating. I am talking about an
12 appeal somebody else is going to take. And that is, to me,
13 a logical way it might go forward at this point.

14 MR. HAVENS: I object to others here speculating
15 as to what I might do.

16 MR. LONGSTRETH: I would be happy to have Mr.
17 Havens speak to that directly.

18 MR. HAVENS: I just spoke. I object.

19 MS. NORWINSKI: Your Honor, if I could suggest a
20 way forward.

21 JUDGE SIPPEL: I hear you, Mr. Havens. Just
22 hold on. I will give you a ruling but let me hear from Ms.
23 Norwinski first.

24 MS. NORWINSKI: Your Honor, if we could have an
25 in-camera conference that includes the four attorneys that

See above.
14M-1 does not
state that the
Prehearing will
result in any
ruling Order, and
the ALJ says this
is not a "hearing"
and there is no
"evidence taken."

1 are here today and their counsel, as well as well as Mr.
 2 Havens, I believe that we can give you a little more infor-
 3 mation about why the substance of what you are asking for
 4 is privileged or detrimental to Mr. Havens.

5 That will then allow you to make a ruling on
 6 whether this is privileged or not. We are not giving you
 7 much here. And then ruling, if Mr. Havens so chooses, can
 8 be appealed up to the Commission.

9 JUDGE SIPPEL: Well, it is going to go up to the
 10 Commission in a sealed envelope, though. Nobody is going
 11 to know what the heck is going on here.

But above the ALJ
 says he does not
 recognize a color
 right. This appears
 to be a joke. I
 appreciate Alice in
 Wonderland trials,
 but they should not
 be at public
 expense.

12 Does that bother anybody or is that just me?

13 Your objection is sustained on the color of
 14 right, Mr. Havens. Okay? Hello?

15 MR. HAVENS: I appreciate that. Thank you.

16 JUDGE SIPPEL: Okay. Where am I left now?

17 Let me ask you this. Let me ask Mr. Ende this
 18 through counsel. Were you paid by Mr. Havens to represent
 19 him?

20 MR. LONGSTRETH: I'm sorry, in this particular
 21 case?

22 JUDGE SIPPEL: Well, I guess -- I mean --

23 MR. LONGSTRETH: Oh no, absolutely not, Your
 24 Honor.

25 JUDGE SIPPEL: Oh, you are not. I'm asking if

1 Mr. Ende was paid.

2 MR. LONGSTRETH: To represent him in connection
3 with this hearing?

4 JUDGE SIPPEL: No, no, no. I'm asking -- you
5 started out with a representation of Mr. Havens back in
6 what was it in August?

7 MR. LONGSTRETH: I believe it was between May
8 and November.

9 JUDGE SIPPEL: It was May. It was the middle of
10 May. Correct?

11 MR. ENDE: Yes, Your Honor.

12 JUDGE SIPPEL: All right. Now, in that connec-
13 tion, during that period of time, during those services,
14 whatever they were, were you paid a fee by Mr. Havens?

15 MR. LONGSTRETH: I guess just for the record we
16 should probably ask Mr. Havens if he asserts a privilege to
17 that answer. I think we would be prepared to answer it.
18 But I do not want to be in the position of -- I do not want
19 my client to be in the position of being accused by Mr.
20 Havens of having broken his privilege. So perhaps we
21 should ask Mr. Havens if he asserts a privilege to that
22 answer.

23 MS. WAID: Your Honor, if I may. This is Nicole
24 Waid from Roetzel and Andress.

25 JUDGE SIPPEL: Yes, Ms. Waid.

I already responded in the clearest terms to the demands-questions of 14M-1, to sole topic of this non-hearing non-evidence "prehearing". See comments above. There was no need for this Prehearing at all, as I stated in my Motion and Letter responding to 14-1 before the Prehearing, and asking that it be called off, since the issues were, by my position, fully locked down. 14M-1 demanded information, and I asserted that all of it is under attorney relation and communication defined Privileges, etc.

No, this is just rehashing

1 MS. WAID: I represent the attorneys. If I may,
2 I just think for clarification for the record, if you
3 wouldn't mind asking the questions of the attorneys that
4 you want the answer to and for each question we could then
5 ask Mr. Havens whether he is going to waive or whether he
6 is actually going to invoke, so we have a clear record of
7 the questions that you would like answered and a clear
8 record from the Commission of whether or not they then can
9 rule of whether that is in fact attorney-client privilege
10 or not attorney-client privilege.

1 That way, everybody is kind of on the same page.
2 We know the questions you want answered. We know what Mr.
3 Havens' feelings are about that, whether he is going to
4 waive or actually invoke.

5 JUDGE SIPPEL: Now, a little bit too, I want to
6 say clever but --

7 MS. WAID: Well, thank you.

8 (Laughter.)

9 MS. WAID: I will take clever.

10 JUDGE SIPPEL: I want to ask each person because
21 I don't know if Mr. Havens is going to assert the privilege
22 to every person.

23 MS. WAID: Exactly.

24 JUDGE SIPPEL: He might tell me he is --

25 MS. WAID: Right.

See above, Havens fully, clearly already responded to the ALJ and he said above that he had in fact received the Havens Letter on 14M-1 addressed to him (which was the same in content to the Motion, also noted above).

1 JUDGE SIPPEL: -- but when he is asked, I don't
2 know what he is going to do.

3 MS. WAID: Right.

4 JUDGE SIPPEL: I never know. Okay?

5 MS. WAID: Right.

6 JUDGE SIPPEL: So, your question is -- you are
7 asking Mr. Havens does he assert the privilege with respect
8 to the question I asked about fees.

9 MR. LONGSTRETH: Correct.

10 JUDGE SIPPEL: Mr. Havens?

11 MR. HAVENS: Yes, sir.

12 JUDGE SIPPEL: Do you object?

13 MR. HAVENS: Could somebody state the question?

14 JUDGE SIPPEL: Oh, yes, a very simple question.
15 I am simply asking Mr. Ende, through counsel, of course, as
16 to whether or not between the time you retained him or from
17 the time he was retained and the time he terminated the
18 retention that -- did you pay him any fees?

19 MR. HAVENS: Your Honor, my answer first of all
20 is what I put in my letter and motion, which is I was
21 ordered to attend. I was not ordered to testify at this
22 matter. And you asked me in the beginning whether I am
23 represented by counsel today. I said no. And that is
24 because I was not ordered to appear before the Agency,
25 under 5 USC 555(b) to testify.

1 If I am ordered to appear before the Agency to
2 testify to something I understand, I intend to get counsel
3 and then I will have counsel represent me and provide
4 appropriate answers but I don't want to go down that path
5 of testifying today.

6 JUDGE SIPPEL: Well, you are not testifying.
7 There is no -- you are not under oath. This is not a
8 hearing. This is just a conference.

9 MR. HAVENS: My understanding, Your Honor, is
10 you are intending to make a ruling today. I, frankly,
11 don't know why this is not -- it was called for a pre-
12 hearing conference. And I didn't believe this would be
13 recorded. So, it will result in an order. I don't know
14 whatever it is.

15 I don't want to participate in testimony man-
16 dated by the Agency, without counsel. I have a right to
17 counsel in those situations. And, therefore, if you order
18 my testimony for a particular purpose, I will, in reason-
19 able time, get counsel and respond to counsel.

The ALJ asked
above if Chen
represents Havens at
this Prehearing, and
the answer was No.
This appears to be
another joke of sorts.

20 JUDGE SIPPEL: Mr. Chen is right here.
21 MR. HAVENS: Mr. Chen is not representing me
22 today in this matter, which I think I gave you the answer
23 to that. You asked me in the beginning. I gave you the
24 answer.

25 JUDGE SIPPEL: Hold on just a second. I am just

1 trying to formulate something there.

2 You are a party to this proceeding and on these
3 particular issues, you are a very important party plus a
4 witness. I obviously contacted you about appearing because
5 I couldn't hold this hearing without you present, or at
6 least without you having waiving the opportunity to be
7 present.

8 So, I notified you in the normal course of
9 events and expected you to be on the other end of the phone
10 participating, as you normally have been. What is the
11 difference between this and any other conference?

12 MR. HAVENS: The other conferences, Your Honor,
13 I attended were voluntary. I didn't have to be -- I was a
14 party voluntarily participating in the hearing with regard
15 to Maritime. That was the party mandated to be in the
16 hearing.

17 In this case, Your Honor, I have read carefully
18 your order many times. It directs the attorneys to come
19 and provide information. It directs me to attend in person
20 or by phone. It does not direct me -- there is nothing in
21 the order directing me to come and testify or answer.
22 Therefore, I haven't prepared with counsel to do that. And
23 if I --

24 JUDGE SIPPEL: Well, you said --

25 MR. HAVENS: Excuse me, Your Honor.

1 JUDGE SIPPEL: Go ahead. Finish up. Finish up.

2 MR. HAVENS: And as I typically do, I do what I
3 believe is careful research and it is my conclusion that if
4 I am ordered by you to testify, which is different than
5 attending voluntarily a pre-hearing conference, to exercise
6 party rights, and if I don't understand what the order is,
7 I will ask for clarification. Once I have an order to
8 provide -- where I am required to provide information or
9 documents, then I will proceed under 5 USC 555(b) and
10 related FCC law and case precedents under it, and I will
11 obtain counsel and respond through counsel.

12 JUDGE SIPPEL: Well, just a second. Just one
13 minute now.

14 The point is I asked you about Mr. Chen repre-
15 senting you here. You said no, you are appearing pro se.

16 So, as with any other attorney, I can ask a question. I
17 mean, if it is improper, obviously they can object. If it
18 meets a privilege, the objection can be raised.

19 Anyway, the point is this. Normally when a
20 conference is held, questions are asked of counsel and it
21 might range from anything from schedule to something such
22 as this. And normally, the answers are just routinely
23 given. Either yes, I know, no, I don't know, or I don't
24 know. But you are complicating it now because you are
25 saying you are here pro se, but you are unable to represent

So, if the ALJ demands I testify on the record, for the purpose of any ruling, order, or sanction, then as I said, I have a right to get counsel and then respond.

1 your pro se because you feel you are not qualified --
2 basically you are telling me you are not qualified to
3 handle this issue in this context.

4 MR. HAVENS: What I said, Your Honor, is that
5 under USC, administrative procedures under 5 USC part
6 555(b) and related FCC rules and case precedence that I am
7 entitled to, I don't have to but I am entitled, if required
8 to appear before the Agency to testify, I am entitled to
9 have counsel.

10 JUDGE SIPPEL: You are not testifying.

11 MR. HAVENS: I think this -- that is my answer,
12 Your Honor. If I am ordered -- if you are not ordering me,
13 then I respectfully decline. If you are ordering me, then
14 I have that right to counsel.

15 JUDGE SIPPEL: No, I'm not ordering you. That's
16 not that kind of proceeding. But you are not giving me a
17 basis to rule on your objection. You are asserting the
18 privilege and, again, I am getting not basis on which to
19 make a ruling.

20 MR. HAVENS: I have submitted a motion and
21 letter.

22 JUDGE SIPPEL: All right, I have been through
23 that before. Okay. And I do, I understand what you are
24 doing. You are asserting the privilege in a blanket form,
25 which is escapes me. I don't think I have ever seen this

No, I asserted defined "Privileges" as to 14M-1 demands-questions. It is not vague, and is not "blanket."

1 done before. I gather, absent unusual circumstances, of
2 course there always could be, but this doesn't seem to
3 amount to that. That is my interpretation and that is my
4 view.

5 Let me move on to the bankruptcy attorneys.
6 Now, this is Ms. Waid.

7 MS. WAID: Yes, sir.

8 JUDGE SIPPEL: Okay and you have got two attor-
9 neys here from the law firm of?

10 MS. WAID: Copeland and Cook, Your Honor.

11 JUDGE SIPPEL: Okay and you are bankruptcy
12 attorneys, basically. And you participated in assisting
13 Mr. Havens on a certain procedural matter, specifically,
14 with respect to a pleading that is in this pile of docu-
15 ments here. Am I correct?

16 MS. WAID: You are, again, just for the record,
17 prior to answering any questions, we would ask Mr. Havens.
18 Mr. Havens, are you waiving your privilege or are you
19 invoking your privilege?

20 JUDGE SIPPEL: Wait a minute. I haven't even
21 asked a question. Privilege to what?

22 MS. WAID: Oh, I'm sorry. I thought you did,
23 Your Honor.

24 JUDGE SIPPEL: No, I didn't ask a question.

25 MS. WAID: Oh, I'm sorry.

1 JUDGE SIPPEL: Well, I did ask a question have
2 you participated in this pleading and I was going to get
3 the pleading to identify it. That's all.

4 MS. WAID: Oh, okay.

5 JUDGE SIPPEL: I mean I haven't asked anything
6 really -- I haven't asked a hard question. You know?

7 This is Havens' first motion under order 13 dash

8 9 -- to I mean that is 19 -- I'm sorry -- to reject settle-
9 ment. What is the number here? Yes, Exhibit H. I mean,

10 it is marked as Exhibit H for purposes of this conference
11 and for no other purpose.

12 Any answer to that? Any reference to that at
13 all?

14 MS. WAID: Just so I am clear with the question,
15 Your Honor, did they assist in the -- did they participate
16 in the preparation.

17 JUDGE SIPPEL: The preparation of the document,
18 yes, in any way.

19 MS. WAID: In any way. And before they would
20 answer that, I would --

21 JUDGE SIPPEL: You want to know what Mr. Havens'
22 is.

23 MS. WAID: I really would like to know.

24 JUDGE SIPPEL: Mr. Havens?

25 MR. HAVENS: Yes, sir?

No one provided
to me any such a
pile of marked
Exhibits.

Under APA, no
decision can be
made but based on
the Record, where
the agency makes
the Record
available to that
subjects of the
potential decision.

1 JUDGE SIPPEL: Did you hear my question?

2 MR. HAVENS: It was a little foggy on the speak-
3 er phone.

4 JUDGE SIPPEL: Well, you can come here any time
5 you want. We'd be glad to have you.

6 MR. HAVENS: We have better weather. We invite
7 you here.

8 JUDGE SIPPEL: This is your motion that was
9 filed back in December of this year -- 2013, rather, to
10 reject a settlement. It is quite a lengthy packet. And I
11 specifically refer to page 11 is the reference. Well, you
12 probably don't have -- do you have this document in front
13 of you? You probably don't, Mr. Havens?

14 MR. HAVENS: I can find it but I am not sure --

15 JUDGE SIPPEL: All right. That's okay.

16 MR. HAVENS: -- my answer is going to be any
17 different than I have said, Your Honor.

18 JUDGE SIPPEL: Okay. Well, that's all right.
19 I'm not going to put you to the trouble of doing that.

20 But this document says on page 11 and it is a
21 breakdown, memo in support of first motion. And then it
22 goes into explaining the variations of the circumstances of
23 bankruptcy. Anyway, it basically talks about the proce-
24 dures of bankruptcy in a broad way and it goes on for a
25 couple of pages, a couple of paragraphs here.

See above - I
was not
provided the
"pile" of
marked
Exhibits.

1 And I am asking, did the bankruptcy lawyers
2 prepare these? That is what I am asking. Go ahead.

3 MR. HAVENS: Yes, I have given my answer. If I
4 am -- I respectfully decline a request at this time for the
5 reasons I gave. If I am ordered to testify, then, although
6 I don't have to have counsel, I will exercise my right to
7 get counsel.

8 And then I would ask counsel at any such testi-
9 mony where they represent me and I am guided by counsel on
10 how to respond, I certainly would want to see that report.

11 So, I mean I respectfully don't want to get into
12 what assisting counsel did and did not do in particular
13 portions of documents or any other matter than they have
14 already described in their limited appearances.

15 JUDGE SIPPEL: Okay. I hear you. You do say at
16 Footnote 1 "Havens actions in this hearing on a pro se
17 basis have been informed by assisting counsel as to proce-
18 dure and substance."

19 MR. HAVENS: I'm not taking back anything I
20 wrote.

21 JUDGE SIPPEL: You wrote that and that is okay.

22 MR. HAVENS: Whatever I wrote is okay.

23 MR. KELLER: Your Honor, I just wanted to note
24 for the record --

25 JUDGE SIPPEL: I'm asking -- this is Maritime's

1 Counsel.

2 MR. KELLER: Yes, this is Robert Keller. I just
3 wanted to note for the record that as to this question of
4 bankruptcy counsel and as to the prior question regarding
5 Mr. Ende's fees, as I understood it, you were not asking
6 Mr. Havens those questions. You were not asking him to
7 testify. You were simply inquiring whether he asserted the
8 privilege.

9 You have already noted that first of all, it is
10 difficult to rule on that privilege because you can't even
11 ask questions to establish the existence of the attorney-
12 client privilege. Now, we are simply trying to elicit
13 questions to find out is there a privilege being asserted.
14 But what is being answered is -- you are not asking him the
15 answers to these questions. You are asking does he assert
16 the privilege.

This was answered
many times, with
clarity, starting
before this
Prehearing in my
Letter and Motion
re 14M-1.

What is "out of
hand" is this
unlawful process- a
prehearing that is
not a hearing, for a
records of evidence
for a ruling Order
that is not
evident, and for
a purpose that has
no basis in law,
and none was
given.

17 And even that we can't get an answer to. It is
18 getting a little out of hand.

19 JUDGE SIPPEL: Are you suggesting I can sharpen
20 up my questions a little better?

21 MR. KELLER: No, I'm suggesting the answers
22 could be a little bit more direct.

23 JUDGE SIPPEL: Oh, well, you are going to have
24 to go shop someplace else for that one.

25 (Laughter.)

1 JUDGE SIPPEL: I am used to this.

2 All right, --

3 MR. HAVENS: I think I am very direct, Mr.

4 Keller.

5 JUDGE SIPPEL: Sir?

6 MR. HAVENS: I thought I was responding to Mr.

7 Keller. I advised Mr. Keller and people seem to be sug-

8 gesting I am not direct. And I am saying here, which I had

9 hoped would be on the record that I am direct.

10 JUDGE SIPPEL: It's on the record. It is on the

11 record. Everything will --

12 MR. HAVENS: And could I ask -- maybe I misun-

13 derstood. Will there be a transcript of this?

14 JUDGE SIPPEL: Yes, yes.

15 MR. HAVENS: Oh, thank you. I didn't know that.

16 JUDGE SIPPEL: Absolutely.

17 MR. HAVENS: I appreciate that.

18 JUDGE SIPPEL: You have got a score card of

19 everybody who is here. I mean, this is the real deal but

20 it is not a hearing. There is no testimony being taken.

21 Nobody can be held for perjury. I mean you can be held for

22 making a false statement to a federal official but that is

23 different.

24 (Laughter.)

25 MS. WAID: Your Honor, if I may.

Apparently
more comedy
on the public
dime.

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1 JUDGE SIPPEL: Yes.

2 MS. WAID: Mr. Havens, this is Nicole Waid and I
3 represent Copeland and Cook. I just want to clarify for
4 you that when the judge was asking that question, he was
5 actually asking Danny and Tim that question. The question
6 to you is are you invoking the privilege or are you waiving
7 the privilege so that Danny and Tim can answer. That is
8 the only question he is asking you. He is not asking you
9 the answer to that question.

10 JUDGE SIPPEL: Do you understand what Ms. Waid
11 has said, Mr. Havens?

12 MR. HAVENS: I don't recall some minutes ago
13 what that topic was.

14 MS. WAID: Your Honor, --

15 JUDGE SIPPEL: Are you able to -- well, just a
16 second. Are you able to hear Ms. Waid okay?

17 MR. HAVENS: I can hear her okay but she is a
18 little distant but I can well enough. But I don't recall
19 back when she -- whatever this issue was, what particularly
20 who asked whom what.

21 JUDGE SIPPEL: This is my question as to Mr.
22 Ende, through counsel, of course. Whether or not you paid
23 him any legal fees for the period of time his firm repre-
24 sented you. That is the only question.

25 So Ms. Waid is saying that you are not being

1 asked to answer that question. Mr. Ende would have the
2 answer to that question. But I am asking you if you have
3 any objection because, obviously, you are objecting to so
4 many things here, if you feel that his answer can somehow
5 or other raises in your mind an attorney-client privilege,
6 which I don't see how it does. But go ahead.

7 MR. HAVENS: What is the difference between my
8 being ordered to give testimony versus ordered to give
9 other information on the record here for you to formulate
10 an order where I don't have counsel? I apologize but I
11 don't know the difference.

12 And had I been subject to an order to appear
13 either to give testimony or to give information, then I
14 would have gotten appropriate counsel and prepared for that
15 and then proceeded on that basis.

16 But what I will say is I don't get free counsel.
17 And that includes Copeland Cook. It includes Mr. Ende. It
18 includes Mr. Chen. I have not, for the purpose of this
19 hearing, sought and obtained pre-counsel.

I said (or meant)
"free counsel" not
"pre-counsel."

20 JUDGE SIPPEL: All right, I think I understand.
21 I am speaking to everybody now. It appears as though I am
22 not going to get anything from anybody that is going to be
23 of any use to me in ruling on a motion. Actually, it is a
24 broad motion, I guess, for a protective order on the basis
25 of privilege, attorney-client privilege. I can't rule on

Again, the ALJ
had my Motion
and Letter on
14M-1.

1 it. Can anybody help me?

2 MS. NORWINSKI: Your Honor, I think you could
3 rule on it, again, if we could have an in-camera hearing
4 and have more freedom to explain to you the basis of the
5 claim of either privilege or secrets.

6 Mr. Havens could explain, I think, because these
7 attorneys have assisted Mr. Havens in this matter, they
8 also could help explain the basis of the privilege or
9 secrets claim that Mr. Havens is making.

10 JUDGE SIPPEL: Have you actually gotten commit-
11 ment from Mr. Havens in any -- well, let me ask the ques-
12 tion flat out.

13 Do you have any commitment from Mr. Havens that
14 he would go along with that procedure?

15 MS. NORWINSKI: I do not, no.

16 JUDGE SIPPEL: I am going to tell you what the
17 odds are.

18 (Laughter.)

19 MR. HAVENS: What are the odds? I would like to
20 know that.

21 (Laughter.)

22 JUDGE SIPPEL: I'm not giving out odds today.

23 MR. HAVENS: Who is doing the betting? I mean
24 who is making this bet?

25 JUDGE SIPPEL: It is an organized -- this is an

The ALJ has a lot of pent-up assumptions and prejudices, and will not express the directly.

1 organized effort by Mr. Havens.

2 MR. HAVENS: How about a conference in Las
3 Vegas?

4 JUDGE SIPPEL: Well, you could say all of those
5 things but do you understand the procedure that Ms.
6 Norwinski is outlining?

7 MR. HAVENS: No, I really don't. I don't know
8 what is involved in in-camera. I have heard the term. I
9 don't know.

10 So again, I think any further proceeding here
11 where in-camera or in Photoshop, or on the street, or
12 whatever, I think if it is a matter where information that
13 I might believe is confidential, secret, 1.6 privileged,
14 work doctrine, or whatever it might be, then I would want
15 to know what that procedure is, what I am supposed to --
16 how I am supposed to participate, whether my participation
17 is testimony or some other type of information which lead
18 to an order that might affect my interest, then I would
19 find appropriate counsel.

20 MS. NORWINSKI: Your Honor, I have another
21 suggestion, if I may.

22 JUDGE SIPPEL: Ms. Norwinski, yes.

23 MS. NORWINSKI: Can we speak with Mr. Havens at
24 another time, explain to him what the in-camera proceeding
25 would entail and see if we can get his agreement and then

1 come back to you, if he so agrees, and set up an in-camera
2 hearing?

3 One other suggestion for proceeding forward --

4 JUDGE SIPPEL: It would be not a hearing, a
5 conference.

6 MS. NORWINSKI: Correct, in-camera conference.

7 JUDGE SIPPEL: There would be no testimony
8 taken.

9 MS. NORWINSKI: Okay, I misspoke.

10 Another suggestion for moving forward on this is
11 does Your Honor want to set some sort of rules or proce-
12 dures prospectively for how Mr. Havens -- what Mr. Havens
13 should say or include in his filing if those filings have
14 been assisted by counsel, whether it is assisted in writing
15 or whether it is assisted with just advice with respect to
16 the issues raised in those proceedings. That can, at
17 least, separate out the prospective from this tangle that
18 we are having retrospectively with privilege and not being
19 able to provide you any information on which to make a
20 ruling on Mr. Havens' claims of privilege.

21 MR. HAVENS: Hold on. I object to any attorney
22 here proposing something for me. I mean, if the judge
23 rules, judges of course, the judge he can rule as he sees
24 fit on what I should and shouldn't do.

25 But I don't want any person here to suggest what

But the ALJ
rejected this at the
start (see above)
and rejected it in
his bench order,
with no explanation
in either case.

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1 I should be doing. You want to talk to me about it, talk
2 to me about it. But I object to somebody here coming up
3 with suggestions for the judge on what I should and should
4 not do, how I should spend my time and what burdens it
5 might place on me.

6 JUDGE SIPPEL: I think really that Ms. Norwinski
7 was making an effort to try to move the ball along a little
8 bit; that she was not trying to overstep herself in any
9 way. But I accept your position with respect to talking
10 about this.

11 We will just move on to something else. Let me
12 ask this question. I have got to frame it right.

13 What I am trying to determine -- and by the way,
14 any such limitations on representation -- well that is what
15 I wanted to ask. Any such limitations on representation
16 should be stated clearly and an appearance of counsel or in

17 a special appearance of counsel on a notice of appearance
18 filed in accordance with the Commission's Rules and with
19 Rule of Evidence of the Federal Rules of Federal Proce-
20 dures. I mean, it is very simple. I am left here without
21 anything.

22 Now, let me start with Mr. Endes on this one --
23 Mr. Ende. I'm sorry. Was any thought given to filing a
24 Notice of Appearance in this case by your law firm?

25 MR. LONGSTRETH: Your Honor, respectfully, we

If the ALJ wanted to ask this, it should have been in 14M-1, not on by the way basis, at the non-hearing prehearing.

No, there is no FCC rule requiring this. FCC rule 1.52 and FRCP rule 11 do not apply to counsel that solely assist, and are not representative counsel. See my Motion and Letter on 14M-1, and other related filings.

1 would like to ask Mr. Havens if he asserts a privilege to
2 the answer to that question. Again, with all of the state-
3 ments that have been undertaken beforehand that he is not
4 being asked to testify, he is simply being asked to state
5 what he is asserting at a hearing in which his participa-
6 tion was required.

7 JUDGE SIPPEL: Do you understand that Mr. Ha-
8 vens?

9 MR. HAVENS: I have given my answer a number of
10 times.

11 JUDGE SIPPEL: Well you have to say it again.
12 You have to say it to every question.

13 MR. HAVENS: My answer is that if I am required
14 to give information, testimony, or talking by the Agency
15 here, then once I am ordered to do that, then in reasonable
16 time then I will get counsel and I will have counsel guide
17 my responses.

18 I was not -- in this order, there is nothing in
19 the order that says I am to do anything but attend. And I
20 have. I am attending but in terms of giving further infor-
21 mation here, I don't want to do that further than I have.

22 I have filed, ahead of this conference today or
23 as the order says a hearing --

24 JUDGE SIPPEL: Did I say hearing in the order?

25 MR. HAVENS: Let me read it.

1 MS. KANE: Your Honor, I hate to jump into the
2 melee but in Footnote 5 of your order, you required --

3 MR. HAVENS: No, I was -- if you might let me
4 finish here. The order beings, number one, a pre-hearing
5 conference is --

6 JUDGE SIPPEL: Yes, pre-hearing.

7 MR. HAVENS: I mean it uses the word conference.
8 It also uses the word pre-hearing. I took it to mean a
9 hearing but anyway, that is my answer to that.

10 JUDGE SIPPEL: All right, well, that is an
11 interesting interpretation. But let me just clarify that
12 this is not a hearing. This is a conference. It has to
13 be, as a subset, a pre-hearing conference but it is a
14 conference and it is on the record.

15 Now, I'm sorry, Ms. Kane, Footnote 5?

16 MS. KANE: Footnote 5, you specifically required
17 Mr. Havens' participation, not merely his attendance.

18 We have now been at this for over an hour with-
19 out furthering any of the purposes of this pre-hearing
20 conference. So I don't know how you would like to proceed,
21 Your Honor, but it is getting rather circular.

22 Mr. Havens identified on the face of his plead-
23 ings that he obtained assistance from counsel for those
24 pleadings and yet now is asserting a privilege over the
25 same information he already asserted as waived, basically,

I was clearly attending and participating, but the fact is that 14M-1 only demanded that the assisting counsel appear to respond to the demands-questions.

This identification was not any sort of "admission" but, as the text notes, an indication that I was getting at some point representative counsel, and also had in meantime some assisting counsel help.

1 by having it on the face of the pleading.

2 JUDGE SIPPEL: Well, --

3 MS. KANE: He won't even allow his counsel to
4 admit that they participated in a pleading, which he al-
5 ready told Your Honor that they participated in.

6 JUDGE SIPPEL: So you see my frustration.

7 MS. KANE: Well, we feel your frustration,
8 certainly Your Honor.

9 JUDGE SIPPEL: We are getting to the end, here
10 but you are right. I mean everything you said is right.
11 But again, I am not asking for any commentary on that from
12 Mr. Havens.

13 MR. HAVENS: I think that is a misrepresenta-
14 tion. My pleadings speak for themselves. In several
15 pleadings, I specifically put footnotes that --

16 JUDGE SIPPEL: You did?

17 MR. HAVENS: -- Copeland, Taylor and Bush and
18 Mr. Chen have provided assistance in the particular plead-
19 ing.

20 In other pleadings if I said I had counsel
21 assisting but didn't say anything more than that, then that
22 is a different statement.

23 JUDGE SIPPEL: Well then, what is the harm in my
24 clarifying that for myself? That is all I am asking these
25 questions to do.

There is no FCC
or other rule
requiring the
particular
information
demanded in
14M-1.

ALJ says Kane
is right, but does
not want Havens
to respond.
What kind of a
hearing or
conference is
this?

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1 MR. HAVENS: I don't think that needs any clari-
2 fication.

3 JUDGE SIPPEL: Well, you know --

4 MR. HAVENS: It is a statement. I mean apart
5 from that, if -- go ahead. Sorry.

6 JUDGE SIPPEL: No, I would just say give me the
7 benefit of the doubt. Put yourself in my shoes. I mean I
8 don't really fully understand what that all means. Yes, it
9 has got an obvious meaning on the face of it but there is
10 more to it than just what is on the face of it. And I
11 don't understand the full significance of those statements.

12 MR. HAVENS: Well respectfully, Your Honor, I
13 didn't understand any rule or law which is the basis for
14 this entire order. I mean what is it? Rule 11? Is it
15 Rule 11 the basis for this?

16 I think your order cited only Rule 11 and FCC
17 Rule 1.52. If there is any other law, I would appreciate
18 knowing what we are doing here.

19 JUDGE SIPPEL: Well do you know what Rule 11 I
20 am talking about? It is the Federal Rules of Civil Proce-
21 dure.

22 MR. HAVENS: I know for attorneys signing plead-
23 ings.

24 JUDGE SIPPEL: Documents. Yes, okay. But why
25 are you taking me down this road now? I am simply trying

No, filings-
pleadings, not
any
documents.

1 to clarify your statement in these pleadings, these motions
2 and objections, where you say that counsel participated in
3 part in this and in part in that, somehow in this, somehow
4 in that. I just want to get it clarified.

5 MR. HAVENS: Right. Your Honor, my point is
6 this and you are all attorneys. I am not. I am doing the
7 best I can and I think I am fairly clear.

8 I object to the government asking me my birth-
9 day, asking me things that the government does not have any
10 business asking.

11 Now, in this matter, I think what the govern-
12 ment, what you are asking specifically in your order gets
13 into attorney-client privilege, other protected informa-
14 tion.

15 But in addition, the question I raised is I
16 don't understand the legal basis if your order. What is it
17 that you think is wrong in the first place by your citing
18 Rule 11 or FCC Rule 1.52?

19 JUDGE SIPPEL: That has to do more with the
20 attorneys than it has to do with you.

21 I mean my first complaint was that I haven't
22 gotten a notice of appearance. Then, two notices of ap-
23 pearances came in. Actually, three ultimately came in; one
24 from Mr. Ende, one from Mr. Chen, and one from the bank-
25 ruptcy attorneys.

I am not sure
this transcription
to the right is
accurate.

1 MR. HAVENS: Well, it is more --

2 JUDGE SIPPEL: And I wanted to clarify those --
3 again, I wanted to get to the rock bottom of what all this
4 meant.

5 MR. HAVENS: I know.

6 JUDGE SIPPEL: Why are these coming in so late?

7 MR. HAVENS: What I am asking, Your Honor, what
8 is the law where they have to, if they were assisting me
9 and they are my counsel, what is the law that they have to
10 file a notice of appearance at all? Why can't they just
11 provide assistance to me without being representative
12 counsel? I mean, that is not a topic today that it is not.
13 But you are expressing frustration. I am, too.
14 I am expressing my frustration here. This is taking a lot
15 of time and money from me away from what I have available
16 to pursue this hearing. And I don't know the legal basis
17 of what you are doing, what you are trying to get at, what
18 you think is wrong here.

19 JUDGE SIPPEL: All right, let me get to that.
20 Let me try and get to that issue. And that is a good
21 question that you are asking.

22 What I am trying to establish, you are filing
23 papers asserting that since you are acting pro se that you
24 are entitled to certain leniency in how your positions are
25 viewed with respect to motions for summary decision.

Since 2012, I
stated many
times in this
11-71 hearing, in
filings, that I had
or was getting
assisting counsel.
The ALJ even
cited to that in
granting my
proposed
schedule in Fall
of 2013.

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1 MR. HAVENS: My --

2 JUDGE SIPPEL: Wait just a minute now. I am not
3 finished.

4 I gave that leniency to you in one situation and
5 now we are coming back again to revisit in another context.

6 And since that time, this question has come up
7 about notices of appearance. And what does that mean. It
8 is a question of ghost writing. I said what the heck is
9 going on here with the ghost writers. Okay?

10 Why should I give you any leniency for being pro
11 se if you have got ghost writer lawyers behind you cranking
12 this stuff out? Think about that.

13 MR. HAVENS: Well, I appreciate the clarification.
14 It wasn't clear in the order.

15 JUDGE SIPPEL: No, it is not going to be clear
16 in the order. I don't see that I had to lay it out for you
17 that way. I am just looking for straight up answers. That
18 is all I am asking for.

19 MR. HAVENS: I am looking for straight up from
20 the government, too.

21 JUDGE SIPPEL: Well, you got it. That is my
22 story and I'm sticking to it.

23 MR. HAVENS: Well, thanks for the clarification.

24 JUDGE SIPPEL: All right.

25 MR. HAVENS: And I have a further question, if

Okay- but this is backasswards. As in Alice in Wonderland mock court.

If this was the "question" then commence a rulemaking, at least state this question, this basis, for the Prehearing in the order calling for it, Order 14M-1.

So, the ALJ did not and does not have to lay out the concern, the purpose of the inquisition, but the victim must be clear. That is not in accord with APA hearing and ruling requirements.

The ALJ has a vague "story" as to "ghost" writing law, and is sticking to it.

1 you will permit.

2 JUDGE SIPPEL: Well, we are not here to talk
3 about that, are we?

4 MR. HAVENS: Well, if we are not then we are
5 not. But I tried to ask for legal cases for what you are
6 talking about and the previous one that requires the notice
7 of appearance. That is my frustration. I think I am
8 entitled to ask the government when it imposes a lot of
9 time and hardship on me and counsel I am trying to work
10 with, what is the legal basis of the imposition? I think I
11 am entitled to that.

12 JUDGE SIPPEL: A notice of appearance is a very
13 simple document. It is very clear what it does and it is
14 very clear what I was looking for. Who is representing you
15 in this case on certain matter?

16 MR. HAVENS: They are not representing me or
17 they would have filed a notice of representation.

18 JUDGE SIPPEL: Okay, that is your answer. So
19 you feel that there is no notice of appearance necessary
20 because they weren't representing you.

21 MR. HAVENS: I think there is a clear difference
22 between representing a party in a hearing and providing
23 assistance, whether it is on the phone or at a café or
24 doing case research or drafting a paragraph or editing a
25 document. I think there is a big difference.

1 And I am not aware of any FCC rule that prohib-
2 its an attorney from assisting a pro se party. And I don't
3 think it is one, respectfully as a layman here, I don't
4 think it is 1.52 or FRCP Rule 11.

5 That is my frustration. I don't know what we
6 are doing here. I appreciate your story today, sticking to
7 it and all. I think that is very helpful clarification but
8 I still don't know the answer to that.

9 JUDGE SIPPEL: Well, stay tuned. I mean, Ms.
10 Kane is right. This thing is being beaten like a dead
11 horse.

12 Let me just ask two other -- really two more
13 questions. Let me ask this. Again, let me ask this of
14 counsel for the bankruptcy attorneys. Did you ever think
15 to file a notice of appearance? Well, I am asking the
16 question, I guess, through Ms. Waid. Can they answer that
17 question?

18 MS. WAID: Well, --

19 JUDGE SIPPEL: Well, you can start all over
20 again.

21 MS. WAID: Well you know in the limited notice
22 of appearance, it does state that they had filed a notice
23 of appearance for the bankruptcy proceedings, Your Honor.

24 JUDGE SIPPEL: That's not my court, though.

25 MS. WAID: Okay, right. Pursuant to your ques-

"Stay tuned"-
what is that. The
ALJ calls this
Prehearing, has
an "agenda" (see
above), as a
"story he is
sticking to" and
then when
challenged, says
"stay tuned" and
-- does not have
any answer at all,
at to the legal
basis of 14M-1.

That is the "dead
horse"-- no law
behind this affair.

1tion now, unfortunately, again, I would have to ask Mr.
2Havens if he is asserting his privilege or waiving it to
3let my clients answer your question.

4 JUDGE SIPPEL: This is with respect to a notice
5of appearance.

6 MS. WAID: Correct.

7 JUDGE SIPPEL: I know, Mr. Havens, you are
8getting tired of this.

9 MS. WAID: So just Mr. Havens, just so you are
10clear, the answer to the question is either I am asserting
11the privilege or I am waiving the privilege, period.

12 So the judge is asking my clients. They are
13asking Tim and Danny a question about whether or not they
14thought about filing a notice of appearance.

15 Are you going to allow Danny and Tim to answer
16that question or are you asserting and invoking a privi-
17lege?

18 MR. HAVENS: They did file a notice of appear-
19ance. I don't know what your question is.

20 JUDGE SIPPEL: I am talking about a notice of
21appearance at the time that you retained their services. I
22am not talking about the last ones that were filed. Those
23were filed because I raised the issue in an order. I am
24talking about when they first came to work for you about
25this case and they started helping you on these pleadings.

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1 And I was not aware of the fact who they were. I know that
2 -- and they are supposed to file a notice of appearance so
3 that I can know. Hello?

4 MR. HAVENS: What is the question?

5 JUDGE SIPPEL: You want the question?

6 MR. HAVENS: Yes.

7 JUDGE SIPPEL: The questions is, I am asking the
8 bankruptcy attorneys, at the time they agreed to assist you
9 in the Maritime case, as you have disclosed assistance in
10 the Maritime case, did they think of filing a notice of
11 appearance. I would like to know what their reasons are,
12 pro or con.

"reasons" for
legal counsel is
privileged and
confidential.

13 MR. HAVENS: Okay, I am asserting the privilege.

14 JUDGE SIPPEL: Okay, there you go.

15 I am going to ask the same question of Mr. Chen.
16 Can you tell me what your position is going to be there?

17 MS. NORWINSKI: And, Your Honor, as I understand
18 --

19 JUDGE SIPPEL: Go ahead but first of all, wait a
20 minute. Just let Ms. Norwinski clarify this.

21 MS. NORWINSKI: And Your Honor, the question is
22 whether Mr. Chen has filed a notice of appearance. Is that
23 correct?

24 JUDGE SIPPEL: No, I know he has ultimately.

25 MS. NORWINSKI: Yes.

No, there is not information as to when any assisting counsel assisted Havens in 11-71 matters, but for Chen appearing briefly as representative counsel, and vague statement by Neil Ende that he volunteered.

1 JUDGE SIPPEL: But at the time that he was
2 retained to work on these Maritime matters, which was way
3 back before that notice of appearance, had he considered,
4 pro or con, filing a notice of appearance?

5 MS. NORWINSKI: And Your Honor, I can speak to
6 this because this is already on the record. In November of
7 2012, Mr. Chen did file a notice of appearance because he
8 was representing Mr. Havens in this particular matter.

9 MR. CHEN: The companies.

10 MS. NORWINSKI: Mr. Havens --

11 MR. CHEN: The companies.

12 MS. NORWINSKI: Okay.

13 JUDGE SIPPEL: Look, both Mr. Havens -- I have
14 got that document right here and I wasn't trying to subma-
15 rine you on this.

16 MS. NORWINSKI: Yes, let me clarify it for the
17 record. Mr. Chen filed a notice of appearance for Mr.
18 Havens' companies because he was representing the compa-
19 nies.

20 JUDGE SIPPEL: No.

21 MS. NORWINSKI: Okay, individual and companies.
22 Okay.

23 JUDGE SIPPEL: Right, that is the way I read it,
24 too.

25 MS. NORWINSKI: Then in February of 2013, there

1 was an issue because Mr. Chen was serving as an expert for
2 Mr. Havens on an unrelated matter in Federal District Court
3 and Mr. Havens --

4 JUDGE SIPPEL: That was in the antitrust matter?

5 MS. NORWINSKI: Correct. So, at that point, Mr.
6 Havens asked Mr. Chen to withdraw as representative counsel
7 in this particular matter so that there would not -- so
8 that they could resolve the issue of his expert services in
9 the antitrust matter in Federal District Court.

10 Mr. Chen did file a notice of withdrawal, which
11 Your Honor accepted, I believe about a month later.

12 JUDGE SIPPEL: Yes, I am familiar with that.

13 MS. NORWINSKI: May? Yes, a couple of months
14 later, it was May.

15 JUDGE SIPPEL: I am familiar with that.

16 MS. NORWINSKI: And --

17 JUDGE SIPPEL: And that is the end of it. Then
18 he came back in again, though.

19 MS. NORWINSKI: Then he filed on January 6th,
20 his notice of limited special appearance.

21 JUDGE SIPPEL: Of what year?

22 MS. NORWINSKI: Of 2013 --

23 JUDGE SIPPEL: Fourteen?

24 MS. NORWINSKI: Fourteen.

25 JUDGE SIPPEL: That's a long time.

No, he did not
again become
representative
counsel. That is
clear on the
record.

1 MS. NORWINSKI: Let me restate that. On January
2 6, 2014, Mr. Chen filed his notice of limited or special
3 appearance in that he informed Your Honor that he has not
4 been authorized by Mr. Havens to serve as general represen-
5 tative counsel but that he was giving Mr. Havens assistance
6 in this matter.

7 JUDGE SIPPEL: All right and Mr. Havens cleared
8 that before it was filed?

9 MS. NORWINSKI: Yes, he did, Your Honor.

10 JUDGE SIPPEL: Is that true, Mr. Havens?

11 MR. HAVENS: I have been making notes. notice. Cleared
12 what?

13 JUDGE SIPPEL: Mr. Chen's filing of the notice
14 of appearance, special notice of appearance on January 6th
15 of this year. Did you **approve** of that?

16 MR. HAVENS: Yes, I did.

17 JUDGE SIPPEL: All right, thank you.

18 Now, I am going to ask Mr. Chen, you had been
19 **representing**, after your pull out, **your come back**, after
20 your expert phase of this case was completed, I guess, you
21 started doing work for Mr. Havens but you didn't file a
22 notice of appearance.

23 MS. NORWINSKI: Your Honor, as stated --

24 JUDGE SIPPEL: Now, I am asking him, did he give
25 any thought to that up or down, back or forth, pro or con.

I approved that Chen has a right to file what he determined, based on the ALJ Order.

There is no come-back to being representative counsel, if there is no come back to being representative counsel. This is a bad joke.

1 MS. NORWINSKI: Your Honor, we are going to ask
2 Mr. Havens if he asserts the privilege over that. I assume
3 he is going to say yes, in which case we are not at liberty
4 to answer whether it was considered.

5 MR. HAVENS: I'm here to respond to the judge.

6 JUDGE SIPPEL: Well, I am going to ask a ques-
7 tion. Do you assert the privilege with respect to the last
8 question I asked?

9 MR. HAVENS: Yes, I do.

10 JUDGE SIPPEL: Thank you. I thank you for
11 responding.

12 Okay, I --

13 MS. KANE: Your Honor, --

14 JUDGE SIPPEL: Yes?

15 MS. KANE: -- may we clarify which entities, if
16 any, these additional counsel represent? Because Mr. Chen
17 originally said he represented some of the SkyTel Entities
18 but it is unclear from his notice of appearance whether he
19 now represents the SkyTel Entities and Mr. Havens, in which
20 case they were providing assistance not to a pro se party -
21 -

22 JUDGE SIPPEL: That is a good question.

23 MS. KANE: -- and the same with Mr. Ende's group
24 and with the bankruptcy.

25 JUDGE SIPPEL: Well, I was going to get into

Simply false,
spurious. Chen
clearly filed a
limited
appearance
saying his NOT
representative
counsel.

1 that but apparently I am being blocked.

2 MS. NORWINSKI: I can at least speak to the
3 question about whether this latest entry of limited appear-
4 ance is for Mr. Havens or the SkyTel or other entities. It
5 is just a limited appearance on behalf of Mr. Havens.

6 JUDGE SIPPEL: Well, Mr. Havens is also appear-
7 ing pro se, according to his latest representation.

8 MS. NORWINSKI: Yes, and in the limited appear-
9 ance, Mr. Chen says that he is not acting as general repre-
10 sentative counsel for Mr. Havens, he is assisting as re-
11 quired by Mr. Havens.

12 JUDGE SIPPEL: Can you slice the cheese that
13 narrow? Have you ever been in a situation where you have
14 done that?

15 MS. NORWINSKI: Are you asking me, personally?

16 JUDGE SIPPEL: Yes, --

17 MS. NORWINSKI: No, I have not.

18 JUDGE SIPPEL: -- in your experience as an
19 attorney. I mean I have had experience as an attorney and
20 I never did that.

21 You had to go in as -- unless you made a special
22 appearance, for example, if you want a continuance and your
23 last attorney he got fired or something like that, you want
24 a special appearance to get more time for something.

25 But for something that goes to the substance of

Norwinski contradicts herself. She also says herein that the ABA and DC rules allow "ghostwriting" and other non-representative assistance. Thus, she has indeed heard of these arrangements.

Also, the ALJ does the same-- he shows herein that he had a hidden (before this Prehearing) agenda-- he does not like "ghostwriting" and although the relevant law allows it in this case (and before FCC), he believes he can subvert Havens and assisting counsel to this inquisition.

1 the case, go in and say as counsel, a limited counsel and
2 the party stays pro se in a case like that, Maritime?

3 That is not a fair question. It is not a ques-
4 tion for you to answer. But anyway, this is really hard to
5 think of that, to wrap my head around that one.

6 MR. LONGSTRETH: Yes, there are standby counsel
7 in some criminal proceedings, I think. There is this idea
8 of standby counsel for somebody who wants to go pro se and
9 the judge thinks he needs some help but doesn't want to
10 interfere with his sixth amendment right to represent
11 himself. So, there is a concept, I think, that may be kind
12 of analogous.

13 MS. WAID: I think D.C. rules --

14 JUDGE SIPPEL: We don't do crimes here. Go
15 ahead.

16 MS. WAID: The D.C. Rules of Professional Re-
17 sponsibility 1.2, it does discuss unbundled legal services
18 and the ABA has actually adopted that in a formal opinion,
19 07-446, which specifically discusses unbundled legal ser-
20 vices and assistance of counsel, as opposed to actually
21 representative counsel and things of that nature.

22 So, I actually think as of recent, it is becom-
23 ing more likely in the legal world, just because of finan-
24 cial reasons, frankly. And I can get Your Honor those
25 formal opinions and D.C. rule, if Your Honor would like to

1 look at those.

2 MS. NORWINSKI: And if I may, again, --

3 JUDGE SIPPEL: All right, just a second. I am
4 generally familiar with that. I am not specifically famil-
5 iar with it but we can handle that. We can handle that.

6 I'm sorry.

7 MS. NORWINSKI: If I can, again, in suggesting a
8 way forward, this might be something that you consider in
9 setting rules for the hearing over which you preside. If
10 there is limited assistance given by counsel, how do you
11 want that handled? Do you want that handled by counsel
12 submitted a notice of limited appearance and specifying
13 what they assisted with or is their assistance behind the
14 scenes that Your Honor doesn't need to be disclosed? And
15 will you allow limited appearance by counsel, if counsel
16 wants to help with one filing but Mr. Havens wants to
17 proceed pro se in a subsequent filing?

18 JUDGE SIPPEL: Well no, I have no problem about
19 a limited appearance if it is specified -- if the limita-
20 tions are made clear. Because again, I have got this
21 problem measuring the substantial participation, whether
22 Mr. Havens is substantially participating in these plead-
23 ings as to whether he is entitled to me looking at him in a
24 lenient fashion as opposed to an attorney. In other words,
25 he kind of gets and advantage.

this
quantification
and
measurement is
privileged and
confidential.
See 14M-1 for
the great extent
of what the ALJ
actually
demanded.

1 And yet, he doesn't get that advantage if he
 2 has substantially participated in the paper. Do you under-
 3 stand?

4 MS. NORWINSKI: Yes.

5 JUDGE SIPPEL: And that is clear. I mean, I'm
 6 not saying there is not some kind of -- the ABA has got
 7 that rule that I don't think too much of but I know it is
 8 there. And I also know District Court cases, at least,
 9 trial judges who are very critical of that and who have
 10 gone out and written on this anyway.

11 You have probably found those cases, hopefully
 12 you have.

13 MS. WAID: I have.

14 JUDGE SIPPEL: And this is not treated lightly
 15 in some cases, in some courts. Not at all.

16 So yes, if you want to know further guidance,
 17 sure. Let yourself be known if you are acting as an attor-
 18 ney, even if it is by letter. Let yourself be known. But
 19 my preference is always a notice of appearance, whether it
 20 is limited, special, whatever it might be and the scope of
 21 the representation. Not the fees. I don't care whether
 22 you are going to be paid or not, just the scope of the
 23 representation.

24 MR. HAVENS: And my request, Your Honor, is the
 25 same as I have stated. I want to proceed under law. And

Not at all. See the ABA opinion Norwinski just cited- I attach it to this 1.301 (a) appeal. It does not say this, but says there is not such unfair advantage.

The ALJ cannot even state what these cases are, and what the alleged concern or disallowance in the cases was about, and if the cases have any bearing on FCC formal hearing, and this particular one.

Again, this is an hearing with no legal basis even disclosed, but that results in an Order and effective sanction, and a lot of expense to Havens and burdens on his assisting counsel.

1 of course I understand in your order that arises out of
2 this or any future order that you, of course, state the
3 law. I haven't understood it thus far. What is the law
4 that prevents assisting counsel that is not representative
5 counsel? And further, what is the definition of when
6 assisting counsel rises to the level of whatever you think
7 is objectionable, not in the D.C. rules, not in the ABA
8 decision, but in some other precedence that you recall? I
9 don't know what the law is behind what we are even doing
10 here today.

11 JUDGE SIPPEL: Well, --

12 MR. HAVENS: That is my frustration. Whatever
13 energy and time and resources I have in this hearing is
14 being eaten up in this matter for which, thus far, you
15 haven't articulated the law, respectfully.

16 JUDGE SIPPEL: Well first of all, I am not
17 supposed to be giving legal advice to parties, number one.
18 And number two, I have been telling you from day one, or
19 asking you in day one, pleading with you since day one to
20 get an attorney, to get an attorney to sit with you
21 throughout this case.

22 MR. HAVENS: Respectfully, Your Honor, my an-
23 swers have been consistent and if anyone cares to go throu-
24 gh all the pleadings I have filed, you will see many times
25 where I have stated that I intend to have representative

But you are
supposed to
conduct legal
proceeding
under law, for
stated legal
purposes under
particular law.

1 counsel, I know what the word meant, for this hearing and
2 possibly some pre-hearing matters. And I have many times
3 said I am proceeding to seek assisting counsel, and but I pro-
4 posed a scheduled to you after the government shutdown. I
5 said that I could not access the ECFS record. I could not
6 and counsel, at that time, working with me could not.

7 And so, therefore, I have made clear, if you go
8 back and review my filings, that the difference between
9 representative counsel and assisting counsel. And I don't
10 think there is any -- there was nothing misleading you. I
11 haven't asked you in a pleading until a recent one, where I
12 cited to a guide book of administrative law judges that had
13 portions on pro se, I haven't asked you for special conces-
14 sions pro se.

15 I am aware of your decision on summary judgment
16 where you denied on the merits but made a comment that Mr.
17 Havens is pro se. I was pro se. In my view, Your Honor, I
18 am pro se until I have representative counsel. And what
19 level of assisting counsel I have, I am not aware of any
20 FCC law or anything you have articulated that equates
21 assisting counsel was representative counsel or that de-
22 fines when assisting counsel rises to the level that under
23 some FCC law or court precedent or your conference, to keep
24 order in your proceedings that has to be stated.

25 JUDGE SIPPEL: All right.

1 MR. HAVENS: And if you come out with a decision
2 in law, whatever it is, I will be happy to apply. If I
3 agree, I will get legal counsel. If I disagree, I will be
4 very up-front about that.

5 JUDGE SIPPEL: Let me read to you from my memo-
6 randum opinion of August the 14th, 2013. However, the
7 presiding judge agrees with SkyTel-O that summary decision
8 was inappropriate at the time that motion was filed as
9 discovery had not yet closed -- okay, that is something
10 else. Summary Judgment is to be refused where the nonmovi-
11 ng party -- the nonmoving party. That is you. You were
12 the nonmoving party -- has not had the opportunity to
13 discovery information that is essential. Although discovery
14 is now closed, Mr. Havens is now without counsel, rendering
15 summary judgment not inappropriate in most respects for the
16 reasons stated above.

17 So as of that time, you were without counsel,
18 August 14, 2013, according to my finding, based on your
19 representation. But that wasn't true. You were being
20 represented at that time by Mr. Chen.

21 MR. HAVENS: That is not true, Your Honor. I am
22 represented in this hearing if counsel represents me. If
23 they file a notice of appearance and they take on that
24 legal responsibility as an attorney, which is entirely
25 different than if I hire an attorney for a chat in the café

1 or doing a case research whatever it might be. It is not
2 at all the same thing. That is my understanding.

3 And again, if you had previously articulated to
4 me or the Commission passed a rule that defines assisting
5 counsel and equates it with representative counsel, makes
6 anything assisting counsel does, subject to Rule 1.5 or
7 adopts Federal Rules of Civil Procedure 11 and then defines
8 when does an assistance rise to the level to where it is
9 equivalent to representative counsel. If there was a law
10 in clarity on it, then that is one thing. But when there
11 is not and there is -- when an attorney files a notice of
12 appearance to represent someone, then they are in charge.
13 They sign the pleadings. They have liability.

14 I don't think there is a lack of clarity in this
15 proceeding or in FCC law as to what representative counsel
16 is in a proceeding like this. And I don't think there is
17 anything prohibiting assisting counsel or acquiring assist-
18 ing counsel to file a notice and then having that deemed to
19 be the same as representative counsel.

20 JUDGE SIPPEL: Let me quote you your own words,
21 then. You said on December 16, 2013 that Havens is not
22 appearing pro se in connection with his opposition to the
23 joint motion. Therefore, summary decision should not, in
24 fairness, be used against him, unless the limited exception
25 applies and then only in the discretion of the judge.

1 However, in the memo opinion, the presiding judge effec-
2 tively found the limited exception does not apply here.
3 That is my saying that you have an unusually good knowledge
4 of the area.

5 Specifically, the judge found that while the
6 Commission has determined that summary decision against
7 parties appearing pro se may be appropriate in situations
8 where the litigation is simple, the litigation in this
9 proceeding is complex. Accordingly, the joint motion
10 should be denied for this reason alone.

11 So, I gave you one. I gave you a leg up because
12 you were appearing pro se.

13 MR. HAVENS: Well wait a minute.

14 JUDGE SIPPEL: You were telling me this.

15 MR. HAVENS: Your Honor, I am glad to respond.

16 You are talking about a filing I made on December 16, 2013.

17 Correct?

18 JUDGE SIPPEL: Yes.

19 MR. HAVENS: And when have you ruled on that?

20 When have you given me a leg up?

21 JUDGE SIPPEL: I denied their motion. The
22 motion should be denied. The joint motion against you that
23 you were objecting to, rather, for summary decision, I
24 denied it.

25 MR. HAVENS: I thought you said December 16,

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1 2013.

2 JUDGE SIPPEL: I sure did.

3 MR. HAVENS: Well you haven't ruled on that.

4 Correct me, if I am wrong.

5 JUDGE SIPPEL: There were two separate summary
6 decisions. There is the later one that was filed that I
7 have not ruled on.

8 MR. HAVENS: Well, the last one you just com-
9 mented is, correct me if I am wrong, is a pleading I filed
10 on December 16, 2013. You were reading from that.

11 JUDGE SIPPEL: That's right.

12 MR. HAVENS: Okay and I thought you said you had
13 ruled in my favor on that. And my response is I didn't
14 think you had ruled on the December 16, 2013 pleading I
15 filed.

16 MR. HAVENS: If you --

17 JUDGE SIPPEL: No, no, wait a minute. Wait a
18 minute. I am confused here. It was an earlier summary
19 decision that you made reference to in this pleading. In
20 other words, you say I have already once done this for you
21 so, I should do it again.

22 I'm sorry. I was quoting you wrong. I was
23 quoting myself wrong. Somebody.

24 MR. HAVENS: Of course you mean to stick ex-
25 actly to what I say and not paraphrasing and I would be

1 glad to --

2 JUDGE SIPPEL: No, I did say exactly what you
3 said.

4 Look at, I have garbled this up enough. I want
5 to take a five minute recess, so we can collect ourselves
6 and then get this thing wrapped up. I have got to get this
7 conference wrapped up. Okay? Are you with me?

8 MR. HAVENS: I will be here. Thank you.

9 JUDGE SIPPEL: Okay, thank you. We will be gone
10 for about five minutes, maybe a little bit longer. Thank
11 you.

12 (Whereupon, the foregoing conference went off
13 the record at 12:14 p.m. and went back on the
14 record at 12:20 p.m.)

15 JUDGE SIPPEL: Okay, we are all reassembled. I
16 am going to go back very briefly to this order of mine
17 dated August 14, 2013 and that is FCC M-16, where I make
18 the specific finding in a footnote, based on what was
19 presented to me by yourself, that Mr. Havens is now without
20 counsel. And yet in Mr. Ende's notice of appearance,
21 special notice of appearance, I believe he has indicated
22 that he has been representing you since that date, or at
23 least at that time.

24 MR. HAVENS: That's not true. He has stated
25 that he has provided limited counsel, not representative

1 counsel in this hearing.

2 JUDGE SIPPEL: Oh, okay. But it is on July one
3 -- okay, yes. Okay but as of July 1, he became counsel to
4 the Technology Law Group. And then prior to my affilia-
5 tions, Mr. Havens had engaged that firm's services. So,
6 anyway, he was back on the case, so to speak.

7 MR. HAVENS: I think he was exactly what he was,
8 and that is certain limited counsel, the extent, the scope,
9 the nature, and objectives of which are under my claim of
10 privilege.

11 JUDGE SIPPEL: Well, Mr. Ende and I agree that
12 any assistance given by me in connection with this is
13 limited scope, that I had not been retained to serve as a
14 general representative counsel to Mr. Havens or to any of
15 the companies associated with him.

16 Rather, Mr. Havens continues to proceed pro se.
17 And yet -- and that was dated -- well of course it was
18 dated, we know what the date is. It is dated June 16,
19 2014.

20 But in any event that establishes the fact that
21 Mr. Chen was acting as your counsel in some respect, de-
22 spite your distinctions, after July 1, 2013 through the
23 Technology firm that he was with, through Mr. Mr. Ende's
24 firm.

25 MR. HAVENS: I think the bounds of limited

1 counsel were clear in terms of the date and everything all
2 they have stated. And other than that, what they did,
3 paragraph by paragraph, objectives and so forth, I think I
4 have stated in my letter and motion of Wednesday and many
5 times here today, other than that, the details of what non-
6 representative assistance they provided to me related to
7 this hearing, I am claiming a privilege.

8 JUDGE SIPPEL: All right, well I am going to
9 take your words at however they are stated and move on from
10 that. I certainly don't agree with much of what you are
11 saying but I don't want to leave the impression that I am.
12 But I do want to try to move this forward and get folks out
13 of here.

14 Everybody is getting a little bit tired. You
15 are, too, Mr. Havens, I know that.

16 MR. HAVENS: No, I'm fine, Your Honor.

17 JUDGE SIPPEL: Oh, good. Okay, that break did
18 you a lot of good. Okay.

19 MR. HAVENS: I am fine and well ~~as a bird~~, thank
20 you.

21 JUDGE SIPPEL: Okay. Here is the deal. I am
22 now going back to the second -- the one that is pending
23 before me, the motion for summary decision that is pending
24 before me.

25 You have made the argument now for this motion

I was clear and
specific, but the
ALJ disagrees, but
will not say why.

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1 that you are appearing pro se in connection with your
2 opposition. And, therefore, summary decision should not,
3 in fairness, be used against him, Havens, unless the lim-
4 ited exception applies.

5 And then in your argument, it does not apply
6 here; that is, the exception where you have special knowl-
7 edge of this particular case or if this is a simple case.
8 And you are saying that you are entitled to that treat-
9 ment, in fairness. In fairness, you should not be treated
10 in the same fashion as let's say Maritime or the Bureau,
11 who are being represented by counsel full-time in full
12 ways. That is what you are saying, I believe. I take it
13 that way.

14 And so, you want to take advantage of that
15 opportunity. You must agree with me on that. You just
16 made the argument.

17 MR. HAVENS: I think my argument, if you would
18 like me to clarify it, I will go back, read that, and send
19 you a letter and post it on the docket.

20 JUDGE SIPPEL: No, no. You wrote what you
21 wrote. That's it.

22 MR. HAVENS: Well then, are you asking me a
23 question or what?

24 JUDGE SIPPEL: I'm just asking you to agree with
25 me that you wrote what you wrote.

1 MR. HAVENS: Of course.

2 JUDGE SIPPEL: Okay.

3 MR. HAVENS: If you are asking me whether what
4 you just recited is what I wrote, I will get the pleading
5 out and, you want me to hold on and I will get it out and
6 read it back to you.

See above. I was not given the "pile" of marked prehearing exhibits, I assume, since I was not in 14M-1 called to testify or otherwise give information.

7 JUDGE SIPPEL: No, you don't have to do that.
8 You don't have to do that. I am sure you will find that I
9 am quoting you accurately, insofar as it goes. If you want
10 to read the whole thing to yourself, that is fine. Every-
11 body is entitled to read it. You are going to hear more
12 about it anyway.

13 MR. HAVENS: Okay, whatever you did cite, it is
14 in context.

15 JUDGE SIPPEL: It is in context now. Before I
16 cited it out of context. Now, I corrected myself. That
17 argument that I just went through is being addressed to the
18 second motion for summary decision. And I am just going to
19 leave it at that.

20 Now, the last thing I am going to do, the last
21 thing I want to do is rule on the claim of privilege, your
22 assertion of attorney-client privilege. And my ruling is
23 that I simply have no basis, I have been given no basis for
24 ruling on the motion for attorney-client privilege, such as
25 the four things that I mentioned up-front.

Utter nonsense. The ALJ himself stated above that he fully understood all these elements were asserted, that Havens and the assising counsel all assert the elements.

1 There has been no representation of the exis-
2 tence of an attorney-client relationship. That has not
3 been laid out.

4 A communication of a client to his or her attor-
5 ney. There has been no specific reference in any pleading,
6 paper, or otherwise, as to a communication that you want
7 protected and the communication is legally related. Is it
8 related to legal advice?

9 The communication, there is no identification of
10 the communication which might be the subject of legal
11 advice.

12 And again, there is no indication of an expecta-
13 tion of confidentiality. It is not raised in anything that
14 you can point to. There is nothing you pointed to. You
15 just haven't done anything to establish a basis for even
16 ruling on an attorney-client privilege.

17 So, I am denying all the efforts to assert the
18 attorney-client privilege at this point. Your appeal has
19 gone up. It is going up. God bless it. I will act ac-
20 cordingly but we are going to continue to move forward with
21 this case.

22 That is all I have. Does anybody have anything
23 more to add?

24 MR. HAVENS: I do. I did not limit my motion on
25 Wednesday simply to attorney-client communication privi-

1lege. I asserted all privileges under attorney relation
2and communications which, as other counsel here today
3stated, and more than attorney-client communication. So,
4that is one clarification.

5 And it is not correct that I have not asserted
6the elements of attorney-client privilege, which is only
7one of the type of privileges I asserted in my letter and
8motion. By filing on Wednesday in the letter and motion
9and further statements today, when I say that I am assert-
10ing attorney-client privilege and other privileges, confi-
11dentiality, work product doctrine privileges, I mean to
12assert the elements of those, including confidentiality,
13including that I had a relation with attorneys and includ-
14ing that I had communications with attorneys. Of course I
15mean I am asserting the components of those.

16 JUDGE SIPPEL: Well I will address all of that
17in a later ruling. I am just making a ruling from the
18bench today so that we can finish business.

19 Does anybody else have anything more?

20 MR. KELLER: Your Honor, I think --

21 JUDGE SIPPEL: Mr. Keller.

22 MR. KELLER: Yes, excuse me. Mr. Keller. I
23think I heard this but I just would say that from Mari-
24time's standpoint, I don't see that there is any need for
25this issue, it is going to up on appeal apparently, to

1 delay consideration and action on the matter that is pend-
2 ing before you.

3 There has been a lot of talk about the differ-
4 ence between representative counsel and assisting counsel,
5 and special limited counsel. Be all that as it may, common
6 sense would say that the whole basis for giving any kind of
7 deference for a pro se litigant is simply because of the
8 fact that he is without advice of counsel. He is without
9 expertise advising him.

10 There is no basis for making that limited to
11 special counsel or representative counsel, particularly
12 that when those are titles that are just applied at will by
13 the party himself, depending on whatever benefit he gets at
14 the time.

Utter nonsense.
Representative
counsel appears
as such, signs
pleadings, has
legal liability as
such, and is
charge. Not at
all same as
assisting
counsel, which
may be nominal
or in cases more
substantial, but
is under
"unbundled
legal services"
that is
permitted.

15 Now, if Mr. Havens, I think you have enough
16 information for you to make an evaluation as to what defer-
17 ence, if any, is entitled in this case. To the extent that
18 you are lacking additional information that might help in
19 that, well, that is because Mr. Havens is withholding that
20 information.

21 So, we would urge that you go ahead and rule on
22 the summary decision in the meantime, notwithstanding these
23 appeals. That is number one.

24 Number two, I have raised this in the past --
25 well, I tell you what. I will save that. I am going to be

1 filing something early next week regarding the dual repre-
2 sentation and all. I have raised this in the past but it
3 is the concept that it is one thing for a party to proceed
4 as an individual pro se. You have already ruled that the
5 entities in this case, the corporate and LLC entities need
6 to have counsel. There is precedent saying that an indi-
7 vidual cannot both represent himself pro se and have his
8 entities represented by counsel where their interests are
9 aligned, where their interests are the same. And we will
10 present that precedent again for your consideration to look
11 at because I think there is sort of dual representation
12 here, especially where Mr. Havens has sort of put it on
13 hold, saying well, I may get counsel someday for the enti-
14 ties, when and if we go to hearing. But again, that is
15 totally at his unilateral discretion whim. It has caused a
16 lot of delay and confusion in this case, in my opinion.

17 Thirdly, we are a little bit concerned but it
18 sounds like we are not necessarily going to need to go
19 there just now. We are a little bit concerned about the
20 concept of an in-camera visitation of this issue. And I am
21 just throwing out as a suggestion, perhaps the concerns we
22 have there, if that were to happen, could be allayed under
23 the auspices of a protective order that is in this case,
24 I'm not sure. Maybe under the protective order, there
25 would be the possibility for other counsel but not princi-

At the ALJ order, I long ago stopped acting for SkyTel entities in this hearing, and Keller and Kane fully knew that.s

Below this point I have not reviewed, but a quick skim, as of the time of filing of this 1301(a) Appeal.

1ples to participate in that. But it may be premature
2since, you apparently are not going to rule on any kind of
3in-camera matter anyway.

4 And then lastly, we appreciate the need to try
5and get to the bottom of this, beyond its relevance to the
6deference issue that has been squarely put in the plead-
7ings. But we would respectfully suggest that beyond that
8issue, whether there has been any inaccurate statements or
9improper actions here is something that maybe could be
10taken up separately by the Enforcement Bureau, outside the
11context of this hearing, rather than let it deter from the
12business at hand.

13 So, those are my sort of points for the record.
14And as I say, as appropriate, we will submit anything else
15in writing early next week.

16 JUDGE SIPPEL: Ms. Kane?

17 MS. KANE: Well, Your Honor, the Enforcement
18Bureau absolutely concurs that we think there is sufficient
19information, despite this morning's circular nature of the
20fact that Mr. Havens was in fact represented during the
21time period in which his oppositions to the motions for
22summary decision were made and any of his other assorted
23pleadings and that he should not be afforded any additional
24deference as a pro se plaintiff, particularly in light of
25the fact that he filed those pleadings on behalf of parties

This is a
deliberate false
statement. See
above.

1 who are not pro se, including the SkyTel Entities.

2 So, we would encourage the Judge, as Mr. Keller
3 did on behalf of Maritime, to rule on the motion for sum-
4 mary decision and hopefully, alleviate the need to proceed
5 further on some of these issues.

6 MR. HAVENS: I would like to respond, if I
7 might, if the others are done.

8 JUDGE SIPPEL: Does anybody else have anything
9 they want to add? No. I'm getting nos.

10 Briefly, Mr. Havens.

11 MR. HAVENS: Regarding Mr. Keller and Ms. Kane
12 saying, representing here that I have had counsel, that is
13 not correct.

14 I want to say again, what I mean representative
15 counsel, it means attorney who files a notice of appearance
16 to represent me or one of the SkyTel Entities, represent
17 the SkyTel Entities in the hearing. And they take that
18 responsibility. They sign pleadings and so forth.

19 You know I object to Ms. Kane and Mr. Keller
20 trying to confuse the issue where they are using the word
21 saying that Mr. Havens has had representative counsel, has
22 had representation in this hearing when the fact is, I have
23 not. And in terms of what the advice of counsel was, they
24 don't know.

25 The other matter is they have both stated that I

1 am representing pro se the SkyTel Entities. That has
2 stopped some time ago when Your Honor made clear I could
3 not do that. That is not continuing. They have both just
4 stated, and they can correct me if I am wrong, that I am
5 still representing pro se the SkyTel Entities.) I am saying
6 that is false.

7 Ms. Kane, is that what you are saying, I am
8 still representing the SkyTel Entities pro se?

9 MS. KANE: On the face of your pleading on
10 December 2, 2013, your first motion under the Order 13M-19,
11 --

12 MR. HAVENS: Yes.

13 MS. KANE: -- you identify Havens as both mean-
14 ing Havens and SkyTel Entities. We would interpret that as
15 meaning that you are representing, for the purposes of that
16 motion, the interest of both Mr. Havens and SkyTel.

17 MR. HAVENS: Let me clarify that. If you want,
18 I will pull out the pleading and read it.

19 What I was saying is that in this pleading, in
20 some cases, if the word SkyTel is used, I meant to say if
21 there is some exhibit or item I am referring to from the
22 past or that talks about SkyTel. But this pleading that
23 you are referring to is signed by me, who is Warren Havens,
24 pro se. And if you think there is any lack of clarity, I
25 am glad to submit a clarification on that.

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1 JUDGE SIPPEL: No. Well, it is up to you but
2 anything that comes in has got to come in within five
3 business days. And I think that I can parse through every-
4 thing that has been said on this latter point.

5 I don't know what the transcript is going to
6 look like with respect to other things.

7 MR. HAVENS: Your Honor, I would only, if I
8 signed something for another entity, it is stated in there.
9 I have my name at the bottom, President of a certain en-
10 tity.

11 And I don't think there is a lack of clarity
12 there but I appreciate the five days to make sure Ms. Kane
13 is not confused or Mr. Keller. I will submit a clarifica-
14 tion.

15 And in terms, I think it was the first opposi-
16 tion I filed to the first three or four Maritime motions
17 for summary judgment, the one in the middle of this past
18 year, that was denied on the merits, not denied because I
19 was pro se and my reading of the decision by Your Honor, I
20 stated there that this is by Warren Havens but in case the
21 judge allows later me to represent the SkyTel Entities or
22 SkyTel get representative counsel, we will file a notice of
23 appearance. But I do recall I had some language in there
24 that on a conditional basis I am submitting this, that
25 particular opposition. But that opposition was submitted

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1 by Warren Havens pro se, and it was not submitted except
2 for those conditions I explained. And at that point, I
3 remember explaining that I have pending a request under
4 1.301(a) with regard to what I believe was the judge's
5 effective or actual barring my representing the SkyTel
6 Entities, when I thought the judge had not articulated a
7 reason under the applicable rule as to why I could not
8 represent the SkyTel Entities. Of course, the judge be-
9 lieves he did articulate that. I disagreed and I appealed.

10 And because I had that pending appeal where I
11 was trying to reestablish my right to represent the SkyTel
12 Entities, I stated that in that opposition but that opposi-
13 tion was by Warren Havens, pro se.

14 So, I believe Ms. Kane and Mr. Keller's state-
15 ments today that I continue to represent the SkyTel. Of
16 course I wouldn't do that. The judge ordered me not to do
17 that. But I will be submitting clarification within five
18 days.

19 JUDGE SIPPEL: All right. Well, five days by my
20 count is going to be the 27th of January, due to the fact
21 that Monday is Martin Luther King's birthday. So, that is
22 a federal holiday. And anybody that has got anything to
23 add can file it.

24 But I don't want any reply pleadings filed
25 because I going to be ruling on several things having to do

1 with this case. In the meantime I don't want to be inter-
2 rupted.

3 But comments or comments? Everybody else, has
4 everybody now had their say? We are all set?

5 Thank you very much. This went a little bit
6 bumpier than I had hoped. I'm sure you think the same
7 thing but we are in recess at this time because the case
8 may still go to hearing.

9 Thank you very much. Have a good day.

10 (Whereupon, at 12:40 p.m., the forego-
11 ing conference was concluded.)
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A				
a.m 984:24 987:2	admits 1003:17	1034:22 1037:5	1026:15,21	1046:20 1047:3
ABA 1050:18	admitted 1003:17	1044:19 1050:15	1040:17	1047:14,14,22
1052:6 1053:7	1009:17	1066:21	antitrust 1046:4,9	1048:18 1049:5
abide 1006:7	admittedly 1005:10	al 987:10 990:12	anybody 987:4,24	1049:22,24
able 992:7 1001:8	adopted 1050:18	1036:4	990:21 1014:12	1051:12,15,19
1007:5 1018:19	adopts 1056:7	ALBERT 985:8	1029:22 1030:1	1052:19 1055:23
1028:15,16	advantage 1051:25	aligned 1067:9	1064:22 1065:19	1056:12 1059:20
1032:19	1052:1 1062:14	allayed 1067:22	1069:8 1072:22	1059:21 1069:15
absent 1022:1	adversaries	alleviate 1069:4	anyway 995:25	1071:23
absolutely 996:18	1000:14	allow 1003:3	1020:19 1024:23	appearances 985:1
1014:23 1027:16	advice 994:24	1014:5 1036:3	1035:9 1050:4	1025:14
1068:18	1003:24 1004:19	1043:15 1051:15	1052:10 1060:6	appearing 1019:4
ac 1064:19	1004:20,21	allows 1071:21	1063:12 1068:3	1020:15 1056:22
accept 1033:9	1005:12 1032:15	amendment	Anzenberger	1057:7,12 1062:1
accepted 1046:11	1053:17 1064:8	1050:10	985:11 990:2	appears 997:2
access 1054:5	1064:11 1066:8	amount 1022:3	ap 1011:15 1038:22	1029:21
accommodation	1069:23	analogous 1050:12	apart 1037:4	appellate 992:10
996:21	advis 1004:7	ance 1043:19	apologize 1006:19	applicable 1072:7
accurately 1063:9	1010:8,8	1049:4,9	1029:10	Applicant 984:8,10
accused 1015:19	advise 1004:13,17	Andress 985:13	appar 1012:5	Application 984:7
acquiring 1056:17	1004:18 1005:10	990:1 1015:24	apparently 1049:1	applied 1066:12
act 1064:19	1011:13,13,15	anguish 1006:25	1065:25 1068:2	applies 1056:25
acting 1039:23	1027:7	answer 991:6 992:7	appeal 998:7,14,18	1062:4
1049:9 1052:17	advising 1008:17	992:13 994:8,9,13	998:24 1011:10	apply 1055:2
1060:21	1008:23 1066:9	995:4,6 998:5,19	1011:15,18	1057:2 1062:5
action 1066:1	affect 1031:18	1000:3,3 1004:14	1013:6,8,12	appreciate 996:1
actions 1025:16	affilia 1060:4	1005:23 1009:4	1064:18 1065:25	1014:15 1027:17
1068:9	afforded 1068:23	1011:2 1013:5,10	1072:10	1037:17 1040:13
actly 1058:25	Agency 1017:24	1015:17,17,22	appealed 1014:8	1042:6 1068:4
actual 1072:5	1018:1,16 1021:8	1016:4 1017:19	1072:9	1071:12
ad 988:13 999:16	1034:14	1018:22,24	appeals 998:21	appropriate 1018:4
1008:11	agenda 993:12	1019:21 1021:11	1066:23	1029:14 1031:19
add 1064:23 1069:9	aggressive 1010:17	1023:12,20	appear 1017:24	1057:7 1068:14
1072:23	1010:19	1024:16 1025:3	1018:1 1021:8	appropriately
addition 992:21	ago 1028:12 1070:2	1026:17 1028:7,9	1029:12 1043:18	994:15
1038:15	agree 1010:20	1029:1,2,4 1034:2	1049:3,6,8	approve 1047:15
additional 1048:16	1055:3 1060:11	1034:9,13 1035:9	appearance 990:15	area 1057:4
1066:18 1068:23	1061:10 1062:15	1041:18 1042:8	992:5 995:9	areas 995:17
address 1065:16	1062:24	1042:16 1043:3	999:11,16	argument 997:17
addressed 1063:17	agreed 1044:8	1043:10,15	1033:16,17,17,24	1006:9 1011:17
addressing 994:10	agreement 1031:25	1048:4 1050:4	1038:22 1039:10	1061:25 1062:5
administrative	agrees 1032:1	answered 1016:7	1040:7 1041:7,12	1062:16,17
984:25 986:19	1055:7	1016:12 1026:14	1041:19 1042:15	1063:17
1021:5 1054:12	ahead 988:23	answering 1022:17	1042:22,23	arises 1053:1
admit 1004:2	997:23 1000:7	answers 987:15	1043:5,14,21	Arnold 986:3
1036:4	1007:18 1020:1	1005:25 1013:9	1044:2,11,22	989:18 993:23
	1025:2 1029:6	1018:4 1020:22	1045:3,4,7,17	996:20

artful 1006:17	995:6,13 997:25	1017:21 1019:19	AUSTIN 986:17	1063:23 1064:15
articulate 1072:9	1010:14 1026:7	1034:19	AUTHORITY	1066:6,10
articulated 1053:15	1026:13 1035:25	attendance 987:18	984:17	1071:24
1054:20 1056:3	1065:1,5,7	1035:17	Authorizations	bear 989:22
1072:6	asserting 992:3,13	attended 1019:13	984:6,8,19	beaten 1042:10
asked 987:14	992:18 1003:14	attending 990:25	authorized 1047:4	becom 1050:22
994:13 997:2	1009:8 1021:17	1020:5 1034:20	available 1011:1	began 999:12
999:3,6 1010:8,9	1021:24 1034:5	attention 1000:17	1039:15	beginning 1004:7
1017:1,8,22	1035:24 1039:23	attor 1022:8	aware 1042:1	1017:22 1018:23
1018:23 1020:14	1043:2,10,16	1052:17 1064:4	1044:1 1054:15	behalf 985:2,7,11
1020:20 1022:21	1044:13 1065:15	attorney 993:20,20	1054:19	985:16 986:1,6,12
1023:5,6 1028:20	assertion 992:7	994:21 998:10		987:21 990:15
1029:1 1034:4,4	998:4 1003:8,9	1003:16,21	B	1009:12 1049:5
1046:6 1048:8	1005:1,22	1011:7 1020:16	back 1004:22	1068:25 1069:3
1054:11,13	1010:17,19,24	1026:11 1032:21	1015:5 1024:9	beings 1035:4
asking 993:25	1011:1 1063:22	1042:2 1049:19	1025:19 1028:19	believe 988:3 995:6
994:24 995:1	assertions 1007:21	1049:19,23	1032:1 1040:5	995:14 996:1
996:13 997:8,11	asserts 1015:16,21	1051:24 1053:20	1045:3 1046:18	998:1,4,6 999:22
997:12 999:4,22	1034:1 1048:2	1053:20 1055:24	1047:19,25	1000:1 1001:6,14
1003:11,22	Assignment 984:18	1055:25 1056:11	1054:8 1059:13	1006:10,15
1004:15,17,19	assist 1023:15	1065:1 1069:15	1059:16 1060:6	1008:3 1010:22
1008:24 1012:20	1044:8 1056:17	Attorney-Advisor	1061:22 1062:18	1011:11,16
1014:3,25 1015:4	assistance 994:24	986:18	1063:6	1014:2 1015:7
1016:3 1017:7,15	995:23 1035:23	attorney-client	bag 1002:16	1018:12 1020:3
1025:1,2,25	1036:18 1039:11	992:16,18,22	1005:14	1031:13 1046:11
1026:5,6,14,15	1041:23 1044:9	994:7,22 996:5	ball 1033:7	1059:21 1062:12
1028:4,5,8,8	1047:5 1048:20	997:7,14,18 999:7	bank 1038:24	1072:4,14
1029:2 1036:11	1050:20 1051:10	1003:15 1004:6	bankruptcy 1022:5	bench 1065:18
1036:24 1038:8,9	1051:13 1056:8	1016:9,10 1029:5	1022:11 1024:23	benefit 1037:7
1038:10,12	1060:12 1061:6	1029:25 1038:13	1024:24 1025:1	1066:13
1039:7,21	assisted 1030:7	1063:22,24	1026:4 1042:14	Berkeley 986:14
1040:18 1042:15	1032:14,14,15	1064:2,16,18,25	1042:23 1044:8	best 989:23
1043:12,13	1051:13	1065:3,6,10	1048:24	1002:24 1038:7
1044:7 1047:24	assisting 995:8,11	attorneys 988:3	barring 1072:5	bet 1030:24
1049:15 1053:19	1022:12 1025:12	991:7 1001:16	based 994:13	better 1024:6
1062:22,24	1025:17 1036:21	1007:8 1013:25	1055:18 1059:18	1026:20
1063:3	1039:8 1042:2	1016:1,3 1019:18	basically 1006:18	betting 1030:23
asleep 996:24	1049:10 1053:4,6	1022:5,12 1030:7	1021:2 1022:12	beyond 995:13
aspect 1005:11	1054:3,9,19,21,22	1037:22 1038:6	1024:23 1035:25	999:19 1004:12
asser 1007:22	1056:4,6,17	1038:20,25	basics 1003:13	1068:5,7
1011:20 1012:11	1066:4	1042:14 1044:8	basis 996:21 997:3	big 1041:25
assert 994:3 997:4	associated 1060:15	1065:13,14	1021:17,18	bind 994:20
1008:25 1016:21	assorted 1068:22	Auction 984:5	1025:17 1029:15	bird 1061:19
1017:7 1026:15	assume 1013:7	August 1015:6	1029:24 1030:4,8	birth 1038:8
1048:7 1064:17	1048:2	1055:6,18	1037:13,15	birthday 1072:21
1065:9,12	ATLAS 984:16	1059:17	1038:16 1039:16	bit 987:5 989:22
asserted 994:7	attend 991:1,2,3,7	auspices 1067:23	1041:10 1063:23	991:21 993:7

1000:2 1001:18 1016:15 1026:22 1033:8 1059:10 1061:14 1067:17 1067:19 1073:5 blank 994:16 blanket 1021:24 ble 1001:23 bless 1064:19 blocked 1049:1 blown 1011:18 bly 1003:11 Bob 985:3 987:20 body 1063:11 bono 996:12 book 1054:12 bother 1014:12 bottom 1039:3 1068:5 1071:9 bound 1002:22 bounds 1060:25 Box 985:4 break 1006:3 1007:17 1061:17 breakdown 1024:21 Brett 986:2 989:19 Brian 986:8 987:23 briefly 1059:16 1069:10 broad 1009:19 1024:24 1029:24 broken 1015:20 bumpier 1073:6 burdens 1033:4 Bureau 986:6,9 987:21,25 1062:10 1068:10 1068:18 Bush 1036:17 business 1038:10 1065:18 1068:12 1071:3	1055:25 CALIFORNIA 984:16 called 996:17 1018:11 camera 993:6 capac 991:17 card 1027:18 cards 993:12 care 987:4 1001:2 1052:21 careful 1006:25 1020:3 carefully 1019:17 cares 1053:23 Carter 986:8 987:23,23,24 case 988:3 993:5 995:1 999:16 1012:6 1014:21 1019:17 1020:10 1021:6 1033:24 1041:15,24 1043:25 1044:9 1044:10 1047:20 1048:3,20 1050:1 1050:2 1053:21 1056:1 1060:6 1062:7,7 1064:21 1066:17 1067:5 1067:16,23 1071:20 1073:1,7 cases 997:1,6 1041:5 1052:8,11 1052:15 1070:20 cat's 1005:14 Catalano 985:8,9 990:12,12 caused 1067:15 ceased 1009:23 cer 988:15 certain 1006:1 1022:13 1039:24 1041:15 1060:8 1071:9 certainly 995:4 1025:10 1036:8	1061:10 cetera 1006:25 1007:1 challenge 998:15 charge 1056:12 chat 1055:25 cheese 1049:12 Chen 986:1 989:7,9 989:10,10,13,20 991:12,16,19 992:8,25 993:24 994:1 995:7,9,15 995:24 996:21 997:25 998:5 999:11,20 1000:24,25 1001:2,7,21 1003:22 1004:6 1005:11,24 1006:1,23 1007:3 1007:5 1008:22 1009:16,21,23 1018:20,21 1020:14 1029:18 1036:18 1038:24 1044:15,22 1045:7,9,11,17 1046:1,6,10 1047:2,18 1048:16 1049:9 1055:20 1060:21 Chen's 992:4 994:4 995:1,22 996:4,8 996:10 1001:10 1047:13 Chief 984:25 986:7 chooses 1014:7 cial 1050:24 circular 1035:21 1068:19 circumstances 1001:9 1022:1 1024:22 cite 1063:13 cited 1037:16 1054:12 1063:16 citing 1038:17	Civil 1037:20 1056:7 claim 995:7,14 998:1 1001:9 1006:7 1030:5,9 1060:9 1063:21 claiming 1002:20 1061:7 claims 1032:20 clari 1037:1 clarifica 1040:13 1071:13 clarification 1016:2 1020:7 1040:23 1042:7 1065:4 1070:25 1072:17 clarified 1038:4 clarify 1008:16 1028:3 1035:11 1038:1 1039:2 1044:20 1045:16 1048:15 1062:18 1070:17 clarifying 1036:24 clarity 1056:10,14 1070:24 1071:11 class 996:25 clear 1016:6,7 1023:14 1038:7 1040:14,15 1041:13,14,21 1043:10 1051:20 1052:5 1054:7 1061:1 1070:2 cleared 1047:7,11 clearly 1011:7 1033:16 clever 1016:16,19 client 994:22 997:4 998:10,12,14,15 1000:10,11,13 1003:17,21 1004:3,21 1010:17,18 1011:8,9 1015:19 1026:12 1064:4 clients 1043:3,12	closed 1055:9,14 colleagues 989:19 collect 1059:5 color 1006:12,13,14 1014:13 colorable 995:7,14 997:6,6,13,17 1006:8 coloring 997:15 com 1058:8 come 1005:25 1008:1 1009:19 1019:18,21 1024:4 1032:1 1040:6 1047:19 1055:1 1071:2 comes 996:25 1071:2 comfortable 987:5 coming 999:21 1009:2 1033:2 1039:6 1040:5 comment 1011:5 1054:16 commentary 1036:11 comments 1073:3,3 Commis 1002:7 Commission 984:1 984:18 986:8,18 994:11,14 998:3 1001:15 1002:1,2 1002:3,5 1006:3 1011:23 1012:13 1012:17,19 1014:8,10 1016:8 1056:4 1057:6 Commission's 1033:18 commit 1030:10 commitment 1030:13 common 999:5 1066:5 communication 994:7,23 1003:20 1003:23 1064:4,6
---	---	--	--	--

C

CA 986:14
café 1041:23

1064:7,9,10,25 1065:3 communications 984:1,4 985:2 986:8,18 987:10 1008:16 1009:6,8 1009:9,12 1065:2 1065:14 compa 1045:18 companies 1045:9 1045:11,18,21 1060:15 COMPANY 984:11,13,14,15 complaint 1038:21 completed 1047:20 complex 1057:9 complicating 1020:24 comply 998:12 1002:22 components 1065:15 con 1004:25 1013:2 1044:12 1045:4 1047:25 concept 1050:11 1067:3,20 concerned 992:15 1007:20 1067:17 1067:19 concerns 1067:21 conces 1054:13 concluded 1073:11 conclusion 1009:19 1020:3 concurs 1068:18 conditional 1071:24 conditions 1072:2 conduct 1001:7 conference 987:9 987:13 990:24 1012:23 1013:2,3 1013:8,25 1018:8 1018:12 1019:11 1020:5,20	1023:10 1031:2 1032:5,6 1034:22 1035:5,7,12,13,14 1035:20 1054:23 1059:7,12 1073:11 conferences 1019:12 conferred 1007:7,8 confi 999:3 1065:10 confiden 992:23 confidences 993:1 998:10,12,25 999:1 1001:11 confidential 993:9 1031:13 confidentiality 1003:25 1064:13 1065:12 conflicting 1006:22 confuse 1069:20 confused 1058:18 1071:13 confusion 987:11 1067:16 connec 1015:12 connection 1001:21 1015:2 1056:22 1060:12 1062:1 Consent 984:18 consider 1051:8 consideration 1066:1 1067:10 considered 992:23 1000:4 1008:4,6 1045:3 1048:4 considers 999:20 consistent 1053:23 constructed 1005:10 contacted 1019:4 context 1002:4 1008:23 1021:3 1040:5 1063:14 1063:15,16 1068:11 CONTINENT	984:16 continuance 1049:22 continue 1064:20 1072:15 continues 999:13 1060:16 continuing 1070:3 convention 988:13 conversation 1008:21 conversations 1008:22 convinced 1005:18 1005:19 Cook 990:2 1022:10 1028:3 1029:17 COOPERATIVE 984:12 Copeland 990:2 1022:10 1028:3 1029:17 1036:17 cordingly 1064:20 corporate 1067:5 Corporation 984:15 985:7 correct 988:4 991:15,16 994:2 994:18 999:15 1001:1 1003:19 1015:10 1017:9 1022:15 1032:6 1043:6 1044:23 1046:5 1057:17 1058:4,9 1065:5 1069:13 1070:4 corrected 1063:16 counsel 987:19 988:2,2 991:10 992:24 993:6,18 995:21 997:3 998:19 1007:8 1014:1,18 1017:15,23 1018:2,3,16,17,19 1018:19 1019:22	1020:11,11,20 1021:9,14 1025:6 1025:7,8,9,12,17 1026:1,4 1028:22 1029:10,14,16 1031:19 1032:14 1033:16,17 1034:16,16 1035:23 1036:3 1036:20 1038:2 1039:9,12 1041:9 1042:14 1046:6 1047:5 1048:16 1049:10 1050:1,1 1050:6,8,20,21 1051:10,11,15,15 1053:4,5,6 1054:1 1054:3,6,9,9,18 1054:19,21,21,22 1055:3,14,17,22 1056:5,5,6,9,15 1056:17,18,19 1059:20,25 1060:1,3,8,14,21 1061:1 1062:11 1065:2 1066:4,4,5 1066:8,11,11 1067:6,8,13,25 1069:12,15,21,23 1071:22 count 1072:20 COUNTY 984:11 couple 1001:14 1024:25,25 1046:13 course 990:17 1017:15 1019:8 1022:2 1028:22 1032:23 1053:1,2 1058:24 1060:17 1063:1 1065:14 1072:8,16 court 992:10 998:10,11 1002:23 1011:8 1042:24 1046:2,9 1052:8 1054:23	courts 1052:15 cover 990:11 cranking 1040:11 crazy 998:25 credible 998:2,4 crimes 1050:14 criminal 1050:7 critical 1052:9 cult 1002:20 D D.C 984:23 1050:13,16,25 1053:7 damage 1003:7 1005:17 Dan 989:19 DANIEL 986:3 Danny 985:11 990:2 1028:5,7 1043:13,15 darn 1011:24 dash 1023:7 date 1059:22 1060:18 1061:1 dated 1018:16 1059:17 1060:17 1060:18,18 dates 995:10 day 1038:9 1053:18 1053:19,19 1073:9 days 1071:3,12 1072:18,19 DC 985:5,10,14,22 986:4,10 DCP 984:11 de 1054:21 1060:21 dead 1042:10 deal 1027:19 1061:21 debatable 999:24 December 1024:9 1056:21 1057:16 1057:25 1058:10 1058:14 1070:10 deci 1002:14
---	--	---	--	---

decide 994:15 1006:2,3	dif 1009:5	1000:19 1011:9	dual 1067:1,11	1010:11 1014:17
decision 1006:1 1039:25 1053:8	differ 1066:3	disclosures 1004:20	due 1072:20	1015:1,11
1054:15 1055:1,7	difference 987:12	discovery 1055:9	DUQUESNE	1017:15 1028:22
1056:23 1057:6	1009:22 1019:11	1055:13,13	984:10	1029:1,17
1057:23 1058:19	1029:7,11	discretion 1056:25	dure 1025:18	1033:23 1038:24
1061:23 1062:2	1041:21,25	1067:15	1037:21	1060:11
1063:18 1066:22	1054:8	discuss 993:7,8	dures 1024:24	Ende's 1026:5
1068:22 1069:4	different 1005:25	995:19 1006:9,11	1032:12 1033:20	1048:23 1059:20
1071:19	1009:16 1020:4	1050:17		1060:23
decisions 1058:6	1024:17 1027:23	discusses 1050:19	E	Endes 1033:22
decline 1021:13	1036:22 1055:25	discussing 995:22	earlier 1058:18	energy 984:13,13
1025:4	differently 998:3,3	996:2	early 1067:1	1053:13
deemed 1056:18	diffi 1002:19	distant 1028:18	1068:15	Enforcement 986:6
defer 1066:16	difficult 1010:16	distinctions	easy 987:18	986:9 1068:10,17
deference 1066:7	1026:10	1060:22	eaten 1053:14	engaged 1060:5
1068:6,24	difficulty 996:1	District 1046:2,9	EB 984:3 987:10	engagement 995:2
defines 1056:4,7	direc 998:18	1052:8	EB-09-IH-1751	999:5,8,12
definition 1000:4	direct 1010:24,25	Division 986:9	984:5	1000:20 1001:3
1053:5	1019:20 1026:22	Dixie 984:15 985:7	ECFS 1054:5	1002:18
delay 1066:1	1027:3,8,9	docket 984:3	edge 1062:7	entail 1031:25
1067:16	directed 1011:12	987:10 1010:6	editing 1041:24	entered 999:16
dence 999:4	directing 1019:21	1062:19	effec 1057:1	enti 1067:13
denied 1054:16	direction 989:11	doctrine 1031:14	effective 1072:5	entire 1037:14
1057:10,21,22,24	directly 1010:13	1065:11	effort 996:3 998:14	entirely 1055:24
1071:18,18	1013:17	docu 1022:14	1031:1 1033:7	entities 1048:15,17
dentiality 1065:11	directs 1019:18,19	document 1005:9	efforts 1064:17	1048:19 1049:4
denying 1003:9	disad 1000:20	1023:17 1024:12	either 992:11	1067:5,5,8 1069:1
1064:17	1008:6	1024:20 1041:13	1000:2,10	1069:16,17
depending 1066:13	disadvantage	1041:25 1045:14	1001:14 1003:4	1070:1,5,8,14
Deputy 986:7	995:21 1000:11	documents 1020:9	1010:8 1012:6	1071:21 1072:6,8
dered 991:1	1000:13	1025:13 1037:24	1020:23 1029:13	1072:12
derstood 1027:13	disadvantaging	doing 995:20 996:9	1030:5 1043:10	entitled 995:4
described 1025:14	1008:9 1010:15	996:12,21 1001:4	Electric 984:12,15	1021:7,7,8
desire 1010:19	disagree 1055:3	1021:24 1024:19	985:7	1039:24 1041:8
despite 1068:19	disagreed 1072:9	1030:23 1033:1	elements 1003:14	1041:11 1051:23
details 1061:5	disclose 998:11	1037:18 1038:6	1004:1 1065:6,12	1062:8 1063:11
deter 1068:11	999:20 1004:2	1039:17 1041:24	elicit 1026:12	1066:17
determi 992:9	1010:15 1011:8	1042:6 1047:21	en 1071:9	entity 1071:8
determination	1011:12,17	1053:9 1056:1	ENBRIDGE	ently 1012:6
995:15	disclosed 992:4,11	domain 1002:15	984:13	entry 1049:3
determine 999:6	995:9 1004:6	door 987:4	ENCANA 984:10	envelope 1002:12
1004:4 1033:13	1008:7 1009:20	doubt 1037:7	ence 1066:4,17	1014:10
determined 1057:6	1009:21 1044:9	drafting 1041:24	encourage 1069:2	equates 1054:20
detrimental	1051:14	drawn 998:24	Ende 985:16 988:2	1056:5
1002:21 1014:4	disclosing 999:1	dressed 1008:12	988:5,6,7,9,9,25	equivalent 1056:9
	1001:3 1003:7	dressng 988:14	1007:15,16	er 1024:3
	disclosure 1000:11	driving 998:25	1009:1,3,4,5	escapes 1021:25

especially 1067:12	expectation	989:19	1072:24	five 1059:5,10
ESQ 985:3,8,12,18	1003:25	fashion 1051:24	files 1056:11	1071:2,12
985:19 986:2,2,3	expected 987:15	1062:10	1069:15	1072:17,19
986:8	1019:9	fault 1013:1	filing 1032:13	flat 1030:12
essential 1055:13	experience 1049:18	favor 1058:13	1033:23 1039:22	focus 991:21
essentially 1011:18	1049:19	FCC 984:22	1043:14 1044:10	focusing 990:16
establish 1026:11	expert 1046:1,8	1020:10 1021:6	1045:4 1047:13	foggy 1024:2
1039:22 1064:15	1047:20	1037:16 1038:18	1051:16,17	folks 1012:4
establishes 1060:20	expertise 1066:9	1042:1 1054:20	1057:16 1065:8	1061:12
et 987:10 1006:25	explain 997:23	1054:23 1056:15	1067:1	footnote 1025:16
1006:25	1000:2 1001:8	1059:17	filings 992:17	1035:2,15,16
ethical 996:4	1006:13 1030:4,6	February 1045:25	998:17 1002:7,9	1059:18
1001:10 1005:1	1030:8 1031:24	federal 984:1 986:8	1006:2 1032:13	footnotes 1036:15
1011:7,19	explained 1072:2	986:17 1027:22	1054:8	forego 1073:10
ethically 995:16	explaining 1024:22	1033:19,19	final 992:9 993:2	foregoing 1059:12
1002:22	1072:3	1037:20 1046:2,9	1006:4	form 1021:24
ethics 992:8 996:25	expressing 1039:13	1056:7 1072:22	finan 1050:23	formal 1050:18,25
evaluation 1066:16	1039:14	fee 1015:14	find 1024:14	former 1010:18
Evelina 986:2	extend 1010:6	feel 998:2,3	1026:13 1031:19	formulate 1019:1
989:17 993:23	extent 1060:8	1004:25 1021:1	1063:8	1029:9
event 1060:20	1066:17	1029:4 1036:7	finding 1055:18	forth 1047:25
events 1019:9		1041:19	1059:18	1061:3 1069:18
everybody 987:3	F	feelings 1016:13	fine 988:15,16	forward 993:5
990:11 1016:11	face 1012:20	fees 996:6,7,8,10,14	990:14 996:18	1001:14 1013:13
1027:19 1029:21	1035:22 1036:1	996:22 1017:8,18	1061:16,19	1013:20 1032:3
1061:14 1073:3,4	1037:9,10 1070:9	1026:5 1028:23	1063:10	1032:10 1051:8
Evidence 1033:19	fact 997:2 999:5	1052:21	fines 1054:22	1061:12 1064:20
ex 1058:24	1008:6 1011:2	ference 1009:6	finish 993:15	found 1012:7
exactly 1004:2	1016:9 1044:1	1013:3	1020:1,1 1035:4	1052:11 1057:2,5
1016:23 1059:2	1060:20 1066:8	fication 1037:2	1065:18	four 1013:25
1060:7	1068:20,20,25	file 984:4,8 998:24	finished 1040:3	1063:25 1071:16
example 1049:22	1069:22 1072:20	1002:11,12	fired 1049:23	Fourteen 1046:23
exception 1056:24	factual 1009:5	1039:10 1042:15	firm 988:18,25	1046:24
1057:2 1062:4,6	fair 1050:3	1043:18 1044:2	989:18 1010:5,11	frame 1033:12
excuse 1019:25	fairly 1038:7	1045:7 1046:10	1022:9 1028:23	framed 1010:2
1065:22	fairness 1056:24	1047:21 1055:23	1033:24 1060:23	frankly 1018:10
exercise 1020:5	1062:3,9,9	1056:18 1071:22	1060:24	1050:24
1025:6	fallen 996:24	1072:23	firm's 1060:5	FRCP 1042:4
exhausted 998:6	false 1027:22	filed 1024:9	first 1004:3 1013:6	free 1029:16
exhibit 1023:9,10	1070:6	1033:18 1034:22	1013:23 1017:19	freedom 1030:4
1070:21	famil 1051:4	1041:17 1042:22	1023:7 1024:21	Friday 984:21
axis 1064:1	familiar 989:3	1043:22,23	1026:9 1038:17	FRN 984:6
existence 1003:16	1046:12,15	1044:22 1045:17	1038:21 1043:24	front 995:21
1026:11	1051:4	1046:19 1047:2,8	1044:19 1053:16	1024:12
exists 1003:21	far 995:16 1053:3	1053:24 1055:8	1070:10 1071:15	frustrated 1001:12
expect 998:20	1053:14	1058:6,9,15	1071:16	frustration 1001:12
expecta 1064:12	Farley 986:2	1068:25 1071:16	fit 990:17 1032:24	1006:20 1036:6,7

1039:13,14 1041:7 1042:5 1053:12 full 998:3 1001:15 1006:11 1037:11 1062:11 full-time 1062:11 fully 1001:8 1037:8 further 1005:8,16 1006:10 1031:10 1034:20,21 1040:25 1052:16 1053:5 1065:9 1069:5 furthering 1035:19 future 1053:2	1057:20 1060:12 1063:23 giving 1000:14 1014:6 1021:16 1030:22 1034:20 1047:5 1053:17 1066:6 glad 1024:5 1057:15 1059:1 1070:25 go 988:23 991:23 991:23 994:21 997:23 1000:7 1001:15,17 1003:13 1005:8 1005:16 1006:13 1007:18 1013:13 1014:9 1018:4 1020:1 1025:2 1026:24 1029:6 1030:14 1037:5 1044:14,19 1049:21 1050:1,8 1050:14 1053:23 1054:7 1059:16 1062:18 1066:21 1067:14,18 1073:8 God 1064:19 goes 995:16 1024:22,24 1049:25 1063:9 going 987:13,15,17 988:1 992:20 994:11 995:20 999:3 1000:16 1001:25 1002:2,3 1002:3,4,5 1005:8 1005:13,17,20 1008:25 1011:1 1011:14,15,23 1013:4,12 1014:9 1014:10,11 1016:5,6,13,21 1017:2 1023:2 1024:16,19 1026:23 1029:22	1029:22 1030:16 1040:9,15 1043:15 1044:15 1044:16 1047:18 1048:1,3,6,25 1052:22 1059:16 1061:8,22 1063:11,18,20 1064:19,20 1065:25 1066:25 1067:18 1068:2 1071:5 1072:20 1072:25 good 987:8 988:7 996:23 999:5 1001:25 1039:20 1048:22 1057:3 1061:17,18 1073:9 gotten 1029:14 1030:10 1038:22 govern 1038:11 government 1038:8 1038:9 1040:20 1041:8 1054:4 gray 995:16 group 985:16 988:10 989:1 1009:23 1048:23 1060:4 guess 1005:18 1007:10 1014:22 1015:15 1029:24 1042:16 1047:20 guidance 1052:16 guide 1034:16 1054:12 guided 1025:9 gun 1001:21	1051:5,5 handled 1051:11 1051:11 hap 1012:13 happen 1067:22 happy 1006:9 1013:16 1055:2 hard 1023:6 1050:4 hardship 1041:9 harm 1002:16 1036:23 harmful 1003:5 hate 1035:1 Havens 986:12,13 987:6,7 990:18,19 990:22,25 991:6 991:11,14 992:3 992:12,17,23 993:1,9,14,15,16 993:17,19,22,24 994:1,3,5 995:3,5 995:8,10,11,13,21 995:23 996:5 997:24 998:1,6,17 998:21 999:17,19 1000:14,22,23,25 1001:9,11,16 1002:2,20 1003:5 1003:7,22 1004:7 1005:1,17,22 1006:7 1007:1,11 1007:21,22 1008:16,17,19,20 1008:22,23,24 1009:7 1010:14 1010:23,25 1011:13,17,21 1012:11,12 1013:14,17,18,21 1014:2,4,7,14,15 1014:18 1015:5 1015:14,16,20,21 1016:5,13,21 1017:7,10,11,13 1017:19 1018:9 1018:21 1019:12 1019:25 1020:2	1021:4,11,20 1022:13,17,18 1023:7,21,24,25 1024:2,6,13,14,16 1025:3,16,19,22 1026:6 1027:3,6 1027:12,15,17 1028:2,11,12,17 1029:7 1030:6,7,9 1030:11,13,19,23 1031:1,2,7,23 1032:12,12,20,21 1034:1,9,13,25 1035:3,7,17,22 1036:12,13,17 1037:1,4,12,22 1038:5 1039:1,5,7 1040:1,13,19,23 1040:25 1041:4 1041:16,21 1043:2,7,9,18 1044:4,6,13 1045:8,10,13,18 1046:2,3,6 1047:4 1047:5,7,10,11,16 1047:21 1048:2,5 1048:9,19 1049:4 1049:5,6,10,11 1051:16,22 1052:24 1053:12 1053:22 1054:17 1055:1,14,21 1056:21 1057:13 1057:15,19,25 1058:3,8,12,16,24 1059:8,19,24 1060:5,7,14,16,25 1061:15,16,19 1062:3,17,22 1063:1,3,13 1064:24 1066:15 1066:19 1067:12 1068:20 1069:6 1069:10,11,21 1070:12,13,14,16 1070:17,23 1071:7,20 1072:1
G				
garbled 1059:4 GAS 984:10 Gates 985:20 988:18,25 1007:15 gather 1022:1 general 1047:4 1049:9 1060:14 generally 1051:4 gesting 1027:8 getting 998:8 1021:18 1026:18 1035:21 1036:9 1043:8 1061:14 1069:9 gh 1053:24 ghost 1040:8,9,11 give 1002:25 1003:3 1005:23 1013:22 1014:2 1029:8,8,13,13 1034:14 1037:6 1040:10 1047:24 given 992:7 998:5 998:15 1002:24 1004:20 1005:21 1011:9 1020:23 1025:3 1033:23 1034:9 1051:10				
		H		
		H 1023:9,10 Ha 1034:7 hand 990:16 1010:7 1026:18 1068:12 handle 1021:3		

1072:13	1011:10	984:24	indication 1064:12	interlocutory
head 1050:5	hire 1055:25	honoring 996:3	indications 1000:14	998:18
Headquarters	hold 1013:22	hoped 1027:9	individual 1045:21	internally 996:2
984:22	1018:25 1019:5	1073:6	1067:4	interpret 1070:14
hear 992:25 993:16	1032:21 1063:5	hopefully 1052:11	infor 1012:20	interpretation
994:9 1000:8	1067:13	1069:4	1014:2 1034:20	1022:3 1035:11
1013:21,22	holiday 1072:22	horse 1042:11	informa 999:19	interrupt 991:24
1024:1 1025:15	honor 987:20	hour 1035:18	1003:3 1038:13	997:23
1028:16,17	988:12,14 989:8	hours 996:2,9,11	information 992:10	INTERSTATE
1063:11	989:15,25 991:24	1006:21,25	992:22,24 993:4,8	984:13
heard 998:21	992:9 993:3,4,25		995:19 997:10	Investigations
1031:8 1065:23	995:5,25 996:3,18	I	998:20 1000:5,9	986:9
hearing 987:13	996:20 997:16,24	i.e 1003:24	1002:1,14,17,21	inviolate 1000:10
993:6 1001:16	998:9 999:10,22	iar 1051:5	1003:1,8,11	invite 1024:6
1006:11 1012:22	1001:6,13 1002:6	idea 1050:7	1008:1 1010:23	invoke 1016:6,14
1012:24 1013:2	1002:19 1004:5	identification	1011:8,17 1013:7	invoking 1022:19
1015:3 1018:8,12	1004:24 1005:21	1064:9	1019:19 1020:8	1028:6 1043:16
1019:5,14,16	1006:16 1007:20	identified 1035:22	1029:9,13	involved 1007:1
1025:16 1027:20	1008:3,15 1012:2	identify 1023:3	1031:12,17	1013:6 1031:8
1029:19 1030:3	1012:15 1013:19	1070:13	1032:19 1034:14	involvement
1032:2,4 1034:5	1013:24 1014:24	implicit 1008:14	1035:25 1055:13	1009:24
1034:23,24	1015:11,23	important 1019:3	1066:16,18,20	issue 991:8 992:21
1035:9,12	1017:19 1018:9	imposes 1041:8	1068:19	998:7,23 999:24
1039:16 1041:22	1019:12,17,25	imposition 1041:10	informed 1025:17	1001:15,18,18
1051:9 1053:13	1021:4,12	impression 1061:11	1047:3	1008:17 1009:7
1054:1 1055:22	1022:10,23	improper 1020:17	ing 1004:8 1009:24	1010:20,21
1060:1 1061:7	1023:15 1024:17	1068:9	1036:19 1049:7	1021:3 1028:19
1067:14 1068:11	1025:23 1027:25	in-camera 993:11	1050:23 1056:18	1039:20 1043:23
1069:17,22	1028:14 1030:2	995:18 1000:1	1065:10,14	1046:1,8 1065:25
1073:8	1031:20 1032:11	1001:16 1002:5	1066:2 1070:14	1067:20 1068:6,8
Hearings 986:9	1033:25 1035:1	1003:2 1006:10	1073:11	1069:20
heck 1014:11	1035:21 1036:5,8	1006:13 1013:25	ings 1035:23	issues 995:23
1040:8	1037:12 1038:5	1030:3 1031:8,11	1037:23 1051:23	1004:8 1019:3
held 1000:10	1039:7 1042:23	1031:24 1032:1,6	1068:7	1032:16 1069:5
1020:20 1027:21	1044:17,21	1067:20 1068:3	initiate 1004:21	ited 1062:4
1027:21	1045:5 1046:11	inaccurate 1068:8	inquiring 1026:7	item 1070:21
Hello 1003:12	1047:3,9,23	inappropriate	insofar 1063:9	items 1010:8
1014:14 1044:3	1048:1,13	1001:7 1055:8,15	intend 991:2	ity 991:18 1002:7
help 1003:1 1010:9	1050:24,25	includ 1065:13	994:20,21 1018:2	
1010:10 1030:1,8	1051:14 1052:24	include 1032:13	1053:25	J
1050:9 1051:16	1053:22 1054:17	includes 1013:25	intending 1018:10	J 985:4,8 986:2,8
1066:18	1055:21 1057:15	1029:17,17,18	inter 1000:5 1073:1	JACKSON 984:11
helped 1006:1	1061:16 1065:20	including 1065:12	interest 1003:5,7	James 986:1
helpful 996:3	1068:17 1070:2	1065:13 1069:1	1031:18 1070:16	989:10 993:24
1004:25 1042:7	1071:7,19	indi 1067:6	interesting 1035:11	January 984:21
helping 1043:25	Honor's 998:18	indicated 992:19	interests 1067:8,9	992:20 1046:19
higher 1002:23	HONORABLE	1008:4,5 1059:21	interfere 1050:10	1047:1,14

1072:20	1025:15,21,25	1032:23 1052:9	1018:13 1020:23	1037:17 1039:8,9
job 1004:23	1026:19,23	1054:12	1020:23,24	1052:25 1053:3,3
John 985:18 988:17	1027:1,5,10,14,16	judgment 1054:15	1023:6,21,23	1053:9,15
988:24 1007:13	1027:18 1028:1,4	1055:10,15	1027:15 1029:11	1054:12,20,23
joint 1056:23	1028:10,15,21	1071:17	1030:20 1031:7,9	1055:2 1056:9,15
1057:9,22	1029:20 1030:10	July 1060:2,3,22	1031:15 1035:20	1060:4
judge 984:25 987:3	1030:16,22,25	jump 1035:1	1037:3,19,22	lawyer 990:23
987:8,21,24 988:5	1031:4,22 1032:4	June 1060:18	1039:5,16 1042:5	998:11,13
988:7,11,15,19,23	1032:7,22,23		1042:8,21 1043:7	lawyers 991:4
989:3,6,9,11,14	1033:3,6 1034:7	K	1043:19 1044:1,3	1025:1 1040:11
989:16,21 990:3,6	1034:11,24	K 985:21	1044:11,24	lay 1040:16
990:10,14,20,23	1035:6,10 1036:2	K&L 985:20	1052:7,8,16	layman 1042:3
991:4,9,12,17,20	1036:6,9,16,23	988:18,25	1053:9 1054:1	lead 1002:14
992:1,14 993:11	1037:3,6,19,24	1007:15	1060:18 1061:15	1031:17
993:14,18,21	1038:19 1039:2,6	Kane 986:7 987:22	1069:19,24	leave 1061:11
994:2,9,19 996:6	1039:19 1040:2	987:22 988:4	1071:5	1063:19
996:8,12,15,19,23	1040:15,21,24	1035:1,15,16	knowing 1037:18	leaving 994:19
997:9,12,19,22	1041:2,12,18	1036:3,7 1042:10	knowl 1062:6	leeway 993:7
998:23 999:14	1042:9,19,24	1048:13,15,23	knowledge 1057:3	left 1014:16
1000:7,16,19,23	1043:4,7,12,20	1068:16,17	known 1052:17,18	1033:20
1000:25 1001:2	1044:5,7,14,19,24	1069:11,19		leg 1057:11,20
1001:20,25	1045:1,13,20,23	1070:7,9,13	L	legal 994:24,24
1002:9,17 1003:6	1046:4,12,15,17	1071:12 1072:14	L 984:24 985:19	1003:24 1028:23
1003:20 1004:9	1046:21,23,25	keep 993:1,9	lack 1056:14	1038:16 1039:16
1004:15,17	1047:7,10,13,17	1010:10 1054:23	1070:24 1071:11	1041:5,10
1005:7 1006:12	1047:24 1048:5,6	Keller 985:3,4	lacking 1066:18	1050:17,19,23
1006:17,24	1048:10,14,22,25	987:20,20	laid 1011:4 1064:3	1053:17 1055:3
1007:3,5,9,12,18	1049:6,12,16,18	1007:15 1025:23	Land 984:4 985:2	1055:24 1064:8
1007:25 1008:8	1050:9,14 1051:3	1026:2,2,21	language 1071:23	1064:10
1008:11,19	1051:18 1052:5	1027:4,7,7	lars 1004:13	legally 1003:23
1009:1,4,14	1052:14 1053:11	1065:20,21,22,22	Las 1031:2	1064:7
1010:2,12	1053:16 1054:25	1069:2,11,19	lastly 1068:4	lege 997:1,4 1006:8
1011:22 1012:3	1055:5,7 1056:20	1071:13	late 1039:6	1043:17 1065:1
1012:16,23	1056:25 1057:1,5	Keller's 1072:14	latest 1049:3,7	leged 1006:6
1013:21 1014:9	1057:14,18,21	key 1003:14	Laughter 988:21	leges 994:8
1014:16,22,25	1058:2,5,11,17	kind 994:19	989:12 990:8	lengthy 1024:10
1015:4,9,12,25	1059:2,9,15	1016:11 1021:16	996:16 1000:18	leniency 1039:24
1016:15,20,24	1060:2,11 1061:8	1050:11 1051:25	1001:24 1012:8	1040:4,10
1017:1,4,6,10,12	1061:17,21	1052:6 1066:6	1016:18 1026:25	lenient 1051:24
1017:14 1018:6	1062:20,24	1068:2	1027:24 1030:18	let's 1009:1
1018:20,25	1063:2,7,15	King's 1072:21	1030:21	1062:10
1019:24 1020:1	1065:16,21	know 997:1,5,13	law 984:25 985:16	letter 989:4,4 994:6
1020:12 1021:10	1068:16 1069:2,8	998:23 999:8	986:19 988:10,18	1001:13 1008:3,8
1021:15,22	1071:1,21 1072:6	1005:15 1007:23	988:25 989:1,18	1008:9,11
1022:8,11,20,24	1072:8,16,19	1012:21 1014:11	1009:23 1010:10	1009:11 1011:4
1023:1,5,17,21,24	judge's 1072:4	1016:12,12,21	1020:10 1022:9	1017:20 1021:21
1024:1,4,8,15,18	judges 986:19	1017:2,4 1018:11	1033:24 1037:13	1052:18 1061:4

1062:19 1065:7,8	logical 1013:13	1047:11 1065:17	1027:21 1030:23	1020:13 1022:20
letting 1001:15	long 1001:17	1066:10	1032:22 1033:20	1040:2 1044:20
1004:23 1007:23	1046:25	man 1005:14	1035:7,8 1036:10	1057:13 1058:17
level 1053:6	longer 1059:10	1018:15	1037:4,7,14	1058:18 1059:5
1054:19,22	Longstreth 985:18	managing 988:9	1038:21 1039:12	minutes 1028:12
1056:8	988:6,8,12,17,17	mandated 1019:15	1040:7 1042:9	1059:10
liability 1056:13	988:22,24,24	Mari 1065:23	1049:19 1052:5	mishearing 997:20
liberty 998:5	989:5 1007:10,13	Maritime 984:4	1058:24 1065:11	misleading 1054:10
1048:3	1007:14,16,19	985:2 987:10,19	1065:15 1069:14	misrepresenta
Licensee 984:6	1008:2,10,13	1019:15 1044:9	1070:13	1036:13
lieves 998:20	1009:11,18	1044:10 1045:2	meaning 1037:9	Mississippi 990:4
1072:9	1010:4,13 1012:1	1050:2 1062:10	1070:15	misspeak 997:19
light 984:11,14,14	1012:5,9,18,25	1069:3 1071:16	meaningful	997:20
1068:24	1013:16 1014:20	Maritime's	1002:14	misspoke 997:16
lightly 1052:14	1014:23 1015:2,7	1025:25	means 1003:22	1032:9
lim 1062:3	1015:15 1017:9	marked 1023:10	1037:8 1069:15	misstate 1008:18
limit 1064:24	1033:25 1050:6	Martin 985:19	meant 1039:4	misun 1027:12
limita 1051:19	Longstreth's	989:1 1072:21	1054:1 1070:20	Mobile 984:4 985:2
limitations 1033:14	1001:13	mary 1069:4	measuring 1051:21	Modification 984:8
1033:15	look 994:12	mation 1012:21	meet 1002:5	Monday 1072:21
limited 992:5 995:9	1045:13 1051:1	1014:3 1034:21	meets 1020:18	money 1039:15
999:11 1025:14	1059:4 1067:10	matter 984:3 987:9	melee 1035:2	month 1046:11
1042:21 1046:20	1071:6	990:16 995:12,22	Membership	months 1046:13
1047:2 1049:3,5,8	looking 1040:17,19	996:22 998:22	984:12,15 985:7	mony 1025:9
1050:1 1051:10	1041:14 1051:23	999:17 1000:15	memo 1024:21	morning 987:9
1051:12,15,19	looks 988:12	1001:19 1004:8	1055:5 1057:1	988:7
1052:20 1056:24	Lord 999:5	1004:19 1005:19	ment 1023:9	morning's 1068:19
1057:2 1059:25	lose 989:21 1003:8	1017:22 1018:22	1030:11 1038:12	motion 994:5
1060:8,13,25	1003:9	1022:13 1025:13	1062:9	1017:20 1021:20
1066:5,10	lot 1002:24 1039:14	1030:7 1031:12	mented 1058:9	1023:7 1024:8,21
list 991:13	1041:8 1061:18	1038:11 1041:15	mentioned 1063:25	1029:23,24
litigant 1066:7	1066:3 1067:16	1045:8 1046:2,4,7	ments 1022:15	1055:8 1056:23
litigation 1057:8,8	LP 984:11	1046:9 1047:6	1034:3 1072:15	1057:9,21,22,22
little 987:5 991:21	Luther 1072:21	1053:14 1066:1	merely 1000:13	1061:4,23,25
995:19 1000:2		1068:3 1069:25	1035:17	1063:18,24
1003:3 1005:8	<hr/> M <hr/>	matters 994:21	merits 1054:16	1064:24 1065:8,8
1014:2 1016:15	M 985:9	1008:5 1045:2	1071:18	1069:3 1070:10
1024:2 1026:18	M-16 1059:17	1054:2	middle 1015:9	1070:16
1026:20,22	ma'am 989:16	mean 988:2 990:22	1071:17	motions 1038:1
1028:18 1033:7	993:21 996:15	990:23 997:22	MIDSTREAM	1039:25 1068:21
1059:10 1061:14	997:9	998:23 1000:5	984:11	1071:16
1067:17,19	magic 999:2	1002:11 1009:18	mind 1016:3	move 993:5 1022:5
1073:5	maintain 1001:10	1010:10 1012:1	1029:5	1033:7,11 1061:9
living 1012:3,6	making 990:15	1012:10,13,18	mine 1059:16	1061:12 1064:20
LLC 984:4,16	1010:17,18	1014:22 1020:17	Ming 989:10	moving 1032:10
985:2 1067:5	1012:6 1027:22	1023:5,8,9	minute 991:25	
LLP 985:20 986:3	1030:9,24 1033:7	1025:11 1027:19	1007:25 1008:20	<hr/> N <hr/>

name 989:17 990:1 993:19,21 1071:9	999:10,15 1000:9 1000:22,24	notified 998:14 1019:8	1019:4 1020:17 1029:3	opinions 1050:25
names 989:22	1001:1,5 1002:6	notwithstanding 1066:22	occur 1012:22 1013:2,3	opportunity 998:15 1011:10 1019:6 1055:12 1062:15
narrow 1049:13	1002:13,19	November 999:12 999:14 1004:7 1009:24,25 1015:8 1045:6	odds 1030:17,19,22	opposed 1050:20 1051:24
nation 992:10	1003:19 1004:5	number 987:16,17 1023:9 1034:9 1035:4 1053:17 1053:18 1066:23 1066:24	Office 986:18	opposi 1071:15 1072:12
nature 991:22,23 1050:21 1060:9 1068:19	1004:11,16,24 1005:6,21 1006:15,19 1007:2,4,7,24 1008:15,20,21 1011:5,6 1012:2,5 1012:15 1013:19 1013:23,24 1030:2,15 1031:6 1031:20,22,23 1032:6,9 1033:6 1044:17,20,21,25 1045:5,10,12,16 1045:21,25 1046:5,13,16,19 1046:22,24 1047:1,9,23 1048:1 1049:2,8 1049:15,17 1051:2,7 1052:4	NW 985:9,13,21 986:4	official 1027:22	opposing 992:24 993:6 995:21
navigate 1006:21	need 1051:14 1065:24 1067:5 1067:18 1068:4 1069:4	o	Oh 1005:7 1014:23 1014:25 1017:14 1022:22,25 1023:4 1026:23 1027:15 1060:2 1061:17	opposition 1056:22 1062:2 1071:25 1071:25 1072:12
Neal 988:9	needs 992:11 993:2 993:4 1037:1 1050:9	oath 1018:7	OIL 984:10	oppositions 1068:21
necessarily 1067:18	nefarious 1005:15	object 1012:9 1013:14,18 1017:12 1020:17 1032:21 1033:2 1038:8 1069:19	okay 987:6,8,24 988:1,6,11,13,22 989:3,5,6 990:14 991:12,12,20 996:19,23 997:21 997:22 1000:9 1001:20 1004:16 1008:13 1014:14 1014:16 1017:4 1021:23 1022:8 1022:11 1023:4 1024:15,18 1025:15,21,22 1028:16,17 1032:9 1037:24 1040:9 1041:18 1042:25 1044:13 1044:14 1045:12 1045:21,22 1048:12 1055:9 1058:12 1059:7,9 1059:15 1060:2,3 1060:3 1061:17 1061:18,21 1063:2,13	order 991:8 992:20 993:2 994:6 998:11,13,14,15 1002:23 1004:21 1006:5 1011:10 1012:19,20 1013:6 1018:13 1018:17 1019:18 1019:21 1020:6,7 1023:7 1029:10 1029:12,24 1031:18 1034:18 1034:19,23,24 1035:2,4 1037:14 1037:16 1038:12 1038:16 1040:14 1040:16 1043:23 1053:1,2 1054:24 1059:16 1067:23 1067:24 1070:10
necessary 1041:19	neil 985:16	objecting 1029:3 1057:23	ones 1043:22	ordered 991:1 998:11 1011:2,8 1013:10 1017:21 1017:21,24 1018:1 1020:4 1021:12 1025:5 1029:8,8 1034:15 1072:16
need 1051:14	never 1017:4 1049:20	objection 1014:13 1020:18 1021:17 1029:3	open 987:4	ordering 1021:12 1021:13,15
needs 992:11 993:2 993:4 1037:1 1050:9	ney 1052:18 1064:5	objectionable 1053:7	opinion 1050:18 1055:6 1057:1 1067:16	orders 1006:22
neys 1022:9	ng 1055:11	objections 1038:2		organized 1030:25
ng 1055:11	Nicole 985:12 990:1 1015:23 1028:2	objectives 1060:9 1061:3		
nies 1045:19	nos 984:8 1069:9	objects 997:3		
night 1008:3	note 998:9,9 1025:23 1026:3	obligated 992:25		
nodding 994:17	noted 1026:9	obligation 992:8 1001:10		
nology 989:1	notice 992:4 999:11 1033:17,24 1038:22 1039:10 1041:6,12,17,19 1042:15,21,22 1043:4,14,18,20 1044:2,10,22 1045:3,4,7,17 1046:10,20 1047:2,11,13,14 1047:22 1048:18 1051:12 1052:19 1055:23 1056:11 1056:18 1059:20 1059:21 1069:15 1071:22	obligations 996:4,4 996:5 1006:22 1011:19		
non 1061:5	notices 1038:22 1040:7	obtain 1020:11		
nonmovi 1055:10		obtained 1029:19 1035:23		
nonmoving 1055:11,12		obtaining 994:23 1003:24		
normal 1019:8		obvious 1037:9		
normally 1019:10 1020:19,22		obviously 990:16		
Norwinski 986:2 989:8,15,17,17 991:24 992:2,16 993:13,23,23 994:3,10,18 995:5 996:7,10,13,17,20 997:8,10,16,21,24				

1031:1	1006:11 1031:16	1049:15	1068:13	preside 1051:9
originally 1048:17	1035:17 1051:21	perspective	Porter 986:3	President 1071:9
outlining 1031:6	particu 1004:12	1010:21	989:18 993:24	presiding 1055:7
outside 1068:10	particular 995:11	phase 1047:20	996:20	1057:1
overstated 1008:14	995:23 999:17	phone 1019:9,20	portions 1025:13	presumably 1013:4
overstep 1033:8	1004:8 1005:9	1024:3 1041:23	1054:13	prevents 1053:4
<hr/>	1014:20 1018:18	Photoshop 1031:11	pose 992:20	previous 1041:6
P	1019:3 1025:12	pile 1022:14	posed 993:20	previously 1056:3
P-R-O-C-E-E-D-...	1036:18 1045:8	Pinnacle 985:7	1054:4	princi 1067:25
987:1	1046:7 1062:7	990:12,15	position 1001:8	prior 999:15
p.m 1059:13,14	1071:25	PIPELINE-MID	1010:16,22	1022:17 1026:4
1073:10	particularly	984:16	1011:20,22	1060:4
packet 1024:10	1028:19 1066:11	place 1033:5	1015:18,19	privi 994:7 996:25
page 1016:11	1068:24	1038:17	1033:9 1044:16	997:3 1006:5,7
1024:11,20	parties 1053:17	Plache 985:9	positions 1039:24	1043:16 1064:25
pages 1024:25	1057:7 1068:25	plaintiff 1068:24	possi 1003:10	privilege 992:3,8,9
paid 1014:18	partner 988:9	plead 1035:22	possibil 1002:6	992:13,14,17,18
1015:1,14	989:1	1036:18 1037:22	possibility 999:1	993:7 994:4,13,15
1028:22 1052:22	party 1019:2,3,14	1051:22 1068:6	1005:16 1067:25	994:22 995:6,7,13
Pamela 986:7	1019:15 1020:6	pleading 1011:14	possibly 1054:2	995:14,16,17
987:22	1041:22 1042:2	1022:14 1023:2,3	post 1062:19	996:5 997:5,7,13
paper 1052:2	1048:20 1050:2	1036:1,4 1053:19	potential 1003:6	997:14,25 998:2,4
1064:6	1055:11,11,12	1054:11 1058:9	potentially 1003:4	998:7 999:8
papers 1039:23	1066:13 1067:3	1058:14,19	POWER 984:14,14	1001:10,15
paragraph 1041:24	passed 1056:4	1063:4 1064:5	pre 1018:11	1002:15 1003:9
1061:3,3	path 1018:4	1070:9,18,19,22	pre-counsel	1003:10,15
paragraphs	pay 1000:16	pleadings 1035:24	1029:19	1005:2,22 1006:3
1024:25	1017:18	1036:14,15,20	pre-hearing 987:9	1006:9 1008:17
paraphrasing	paying 996:6,7,8,10	1038:1 1043:25	1020:5 1035:4,6,8	1008:24,25
1058:25	996:13	1053:24 1056:13	1035:13,19	1009:7,9,10
parse 1071:3	PC 985:4	1068:23,25	1054:2	1010:14,18,19,24
part 987:12	pealed 1011:16	1069:18 1072:24	precedence 1021:6	1012:12 1015:16
1005:10,11	pearances 1038:23	please 987:3 989:22	1053:8	1015:20,21
1021:5 1038:3,3	pen 1012:14	997:23 1000:7	precedent 1054:23	1016:9,10,21
participa 1034:5	pend 1066:1	ples 1068:1	1067:6,10	1017:7 1020:18
Participant 984:5	pending 1011:16	PLLC 985:9	precedents 1020:10	1021:18,24
participate 990:17	1061:22,23	plus 1019:3	preference 1052:19	1022:18,19,21
1018:15 1023:15	1072:3,10	PO 985:4	premature 1068:1	1026:8,10,12,13
1031:16 1068:1	people 1027:7	point 987:16,17	preparation	1026:16 1028:6,7
participated	period 1009:22,25	993:11 1006:8	1023:16,17	1029:5,25,25
1005:11 1022:12	1015:13 1028:23	1013:4,13	prepare 1025:2	1030:5,8 1032:18
1023:2 1036:4,5	1043:11 1068:21	1020:14,19	prepared 1015:17	1032:20 1034:1
1038:2 1052:2	perjury 1027:21	1038:5 1046:5	1019:22 1029:14	1035:24 1038:13
participating	permit 1041:1	1064:14,18	present 986:16	1043:2,11,11
986:20 1019:10	person 1016:20,22	1071:4 1072:2	993:6 1019:5,7	1044:13 1048:2,7
1019:14 1051:22	1019:19 1032:25	pointed 1064:14	1067:10	1060:10 1061:7
participation	personally 998:13	points 994:10	presented 1059:19	1063:21,22,24

1064:16,18	proceed 995:25	purpose 1002:10	1013:9 1016:3,7	1059:15
1065:6,10	1002:25 1020:9	1002:13 1003:24	1016:12 1020:20	recall 1028:12,18
privileged 992:11	1035:20 1051:17	1018:18 1023:11	1022:17 1026:6	1053:8 1071:23
993:8 995:17,20	1052:25 1060:16	1029:18	1026:11,13,15,20	receiving 1009:8
995:24 997:11	1067:3 1069:4	purposes 994:23	1036:25 1042:13	recess 1059:5
998:20 999:20,23	proceeded 1029:15	1023:10 1035:19	1044:7	1073:7
999:25 1000:3	proceeding 995:18	1070:15	quired 1049:11	recited 1063:4
1002:21 1003:4	1003:2 1006:5	Pursuant 1042:25	quite 1024:10	record 994:14
1005:24 1006:4	1019:2 1021:16	pursue 1011:1	quote 1056:20	1015:15 1016:2,6
1008:4,5,6	1031:10,24	1039:16	quoting 1058:22,23	1016:8 1022:16
1012:20 1013:7	1032:3 1054:3	put 1010:20	1063:9	1025:24 1026:3
1013:10 1014:4,6	1056:15,16	1017:20 1024:19	<hr/> R <hr/>	1027:9,10,11
1031:13	1057:9	1036:15 1037:7	Radio 984:7,9,19	1029:9 1035:14
privileges 992:22	proceedings 993:10	1067:12 1068:6	RAIL 984:17	1045:6,17 1054:5
1065:1,7,10,11	1003:1 1032:16	<hr/> Q <hr/>	raised 1020:18	1059:13,14
pro 986:13 996:12	1042:23 1050:7	qualified 1021:1,2	1032:16 1038:15	1068:13
1020:15,25	1054:24	ques 1030:11	1043:23 1064:13	recorded 1018:13
1021:1 1025:16	product 1065:11	1042:25 1048:6	1066:24 1067:2	reestablish 1072:11
1039:23 1040:10	Professional	1050:3	raises 1029:5	refer 1024:11
1042:2 1044:12	1050:16	question 992:13	RANDAZZO	reference 1023:12
1045:4 1047:25	program 1007:1	993:16,17,20,25	986:17	1024:11 1058:19
1048:20 1049:7	progressing	994:12 997:2	randum 1055:6	1064:5
1050:2,8 1051:17	1001:17	998:1,6 999:6,22	range 1020:21	referred 1011:4,5
1054:3,13,14,17	prohib 1042:1	1005:3 1007:19	read 994:6 997:1	referring 1070:21
1054:17,18	prohibiting	1013:4 1016:4	1008:12 1019:17	1070:23
1056:22 1057:7	1056:17	1017:6,8,13,14	1034:25 1045:23	refusal 994:13
1057:12 1060:16	proposing 1032:22	1020:16 1022:21	1055:5 1062:18	refused 1055:10
1062:1 1066:7	prospective	1022:24 1023:1,6	1063:6,10,11	regard 1019:14
1067:4,7 1068:24	1032:17	1023:14 1024:1	1070:18	1072:4
1069:1 1070:1,5,8	prospectively	1026:3,4 1028:4,5	reading 1058:10	regarding 1009:7
1070:24 1071:19	1032:12	1028:5,8,9,21,24	1071:19	1026:4 1067:1
1072:1,13	protected 1038:13	1029:1,2 1033:12	ready 1036:5	1069:11
probably 1015:16	1064:7	1034:2,12	real 1027:19	REGIONAL
1024:12,13	protective 1029:24	1038:15 1039:21	really 1004:23	984:17
1052:11	1067:23,24	1040:6,8,25	1010:21 1023:6	reject 1012:11
problem 988:20	provide 993:4	1042:16,17	1023:23 1031:7	1023:8 1024:10
1009:15 1051:18	1010:22 1018:3	1043:3,10,13,16	1033:6 1037:8	related 1003:23
1051:21	1019:19 1020:8,8	1043:19 1044:4,5	1042:12 1050:4	1020:10 1021:6
proce 1024:23	1032:19 1039:11	1044:15,21	reason 1018:18	1061:6 1064:7,8
1025:17 1032:11	provided 1036:18	1048:8,22 1049:3	1057:10 1072:7	relation 994:7
1033:19 1037:20	1059:25 1061:6	1050:3 1062:23	reasonable 998:13	1004:6 1065:1,13
procedural	providing 1041:22	questions 987:14	1034:15	relationship
1022:13	1048:20	992:6,19 994:20	reasons 993:10	1003:17,18
procedure 1002:10	public 1002:4,15	994:20 998:19	1025:5 1044:11	1004:3 1064:2
1030:14 1031:5	PUGET 984:12	999:3 1004:18	1050:24 1055:16	relevance 1068:5
1031:15 1056:7	pull 1047:19	1010:2 1011:3	reassembled	remember 1072:3
procedures 1021:5	1070:18			rendering 1055:14

reply 1072:24	1001:21 1018:21	rest 1010:20	room 1005:23	S.W 984:22
report 1025:10	1041:14,16,20,22	restate 1047:1	routinely 1020:22	satisfied 1001:20
repre 989:6 990:1	1045:8,18	result 1018:13	Ruhl 985:11 990:2	save 1066:25
1004:9 1020:14	1047:19 1059:22	retained 1017:16	rule 992:25 994:14	saw 989:4
1028:23 1049:9	1069:12 1070:1,5	1017:17 1043:21	998:8,9 1000:4	saying 1005:13
1067:1	1070:8,15 1072:5	1045:2 1060:13	1006:4 1011:19	1012:19 1020:25
represen 1047:4	represents 1005:14	retention 1017:18	1011:23 1012:11	1027:8 1028:25
represent 989:19	1048:19 1055:22	retrospectively	1016:9 1021:17	1052:6 1057:3
991:5,18 1009:21	request 993:3	1032:18	1026:10 1029:25	1061:11 1062:8
1009:23 1010:5	1025:4 1052:24	reveal 998:10	1030:3 1032:23	1062:12 1067:6
1014:18 1015:2	1072:3	review 1003:13,14	1033:19 1037:13	1067:13 1069:12
1016:1 1018:3	required 1020:8	1054:8	1037:14,15,16,17	1069:21 1070:5,7
1020:25 1025:9	1021:7 1034:6,13	revisit 1040:5	1037:19 1038:18	1070:19
1028:3 1048:16	1035:2,16	RICHARD 984:24	1038:18 1042:1,4	says 993:2 998:9
1050:10 1056:12	requires 1041:6	right 989:4,21	1050:25 1052:7	999:19 1011:7
1067:7 1069:16	research 1020:3	997:6,6,13 1000:7	1056:4,6 1063:21	1024:20 1034:19
1069:16 1071:21	1041:24 1056:1	1000:23 1006:15	1066:21 1068:2	1034:23 1049:9
1072:8,11,15	resolve 1046:8	1010:4 1014:14	1069:3 1072:7	scenes 1051:14
representation	resources 1053:13	1015:12 1016:25	ruled 1011:24,24	schedule 1020:21
991:22 994:1	respect 999:17,18	1017:3,5 1018:16	1057:19 1058:3,7	scheduled 1054:4
1001:6 1004:12	1005:9 1007:11	1018:20 1021:14	1058:13,14	scope 994:1 995:2
1005:4 1009:16	1007:19 1010:7	1021:22 1024:15	1067:4	995:22 999:4,8,12
1009:20 1010:5,6	1017:7 1022:14	1024:18 1025:6	rules 992:8 1005:1	1000:20 1001:3
1015:5 1033:14	1032:15 1033:9	1027:2 1029:20	1021:6 1032:11	1002:18 1004:9
1033:15 1041:17	1039:25 1043:4	1033:12 1035:10	1032:23 1033:18	1004:12 1005:4
1049:7 1052:21	1048:7 1060:21	1036:10,10	1033:19 1037:20	1007:21,22
1052:23 1055:19	1071:6	1038:5 1039:19	1050:13,16	1009:15,19
1064:1 1067:11	respectfully 993:3	1040:24 1042:10	1051:9 1053:7	1010:4,5 1013:6
1069:22	1021:13 1025:4	1042:25 1045:14	1056:7	1052:20,22
representative	1025:11 1033:25	1045:23 1047:7	ruling 997:5 999:7	1060:8,13
991:14 1039:11	1037:12 1042:3	1047:17 1050:10	1003:9 1011:7	score 1027:18
1046:6 1050:21	1053:15,22	1051:3 1054:25	1013:8,22 1014:5	se 986:13 1020:15
1053:4,25 1054:9	1068:7	1058:11 1061:8	1014:7 1018:10	1020:25 1021:1
1054:18,21	respects 1055:15	1072:11,19	1021:19 1029:23	1025:16 1039:23
1056:5,9,15,19	respond 993:2	rights 998:7 1011:2	1032:20 1063:22	1040:11 1042:2
1059:25 1060:14	1018:19 1020:11	1020:6	1063:24 1064:16	1048:20 1049:7
1061:6 1066:4,11	1025:10 1048:5	rine 1045:15	1065:17,17	1050:2,8 1051:17
1069:14,21	1057:15 1069:6	rise 1056:8	1072:25	1054:13,14,17,17
1071:22	responding 1027:6	rises 1053:6	running 1001:22	1054:18 1056:22
represented 990:20	1048:11	1054:22	1010:23	1057:7,12
991:10 1017:23	response 994:4	risk 1003:11	rupt 1000:6	1060:16 1062:1
1048:17 1055:20	997:25 999:23	road 1037:25	ruptcy 1038:25	1066:7 1067:4,7
1055:22 1062:11	1058:13	Robert 985:4	rupted 1073:2	1068:24 1069:1
1067:8 1068:20	responses 992:19	1026:2	RURAL 984:11	1070:1,5,8,24
representing	1034:17	rock 1039:3		1071:19 1072:1
988:25 990:24	responsibility	Roetzel 985:13	S	1072:13
991:14 993:24	1055:24 1069:18	990:1 1015:24	S 986:7	seal 1002:7,9,12

sealed 1014:10	serving 1046:1	996:15,19,23	1041:2,12,18	somebody 1013:12
seat 987:4	set 1032:1,11	997:9,12,19,22	1042:9,19,24	1017:13 1033:2
seated 987:3	1073:4	998:23 999:14	1043:4,7,20	1050:8 1058:23
second 1018:25	setting 1004:4	1000:7,16,19,23	1044:5,7,14,19,24	someday 1067:13
1020:12 1028:16	1051:9	1000:25 1001:2	1045:1,13,20,23	someplace 1026:24
1051:3 1061:22	settle 1023:8	1001:20,25	1046:4,12,15,17	someway 1038:3,3
1063:18	settlement 1024:10	1002:9,17 1003:6	1046:21,23,25	sorry 988:8 993:19
secret 999:4 1000:4	sharpen 1026:19	1003:20 1004:9	1047:7,10,13,17	996:15 1004:24
1000:4,5,9	ship 1004:7	1004:15,17	1047:24 1048:6	1007:13 1008:13
1031:13	shoals 1006:22	1005:7 1006:12	1048:10,14,22,25	1008:14 1010:10
secrets 992:23	shoes 1037:7	1006:17,24	1049:6,12,16,18	1010:18 1012:25
993:1 998:12	shop 1026:24	1007:3,5,9,12,18	1050:14 1051:3	1012:25 1014:20
999:1,2 1030:5,9	shutdown 1054:4	1007:25 1008:8	1051:18 1052:5	1022:22,25
see 990:10,17	shy 1007:23	1008:11,19	1052:14 1053:11	1023:8 1033:23
1003:7 1006:12	side 1001:18	1009:1,4,14	1053:16 1054:25	1035:15 1037:5
1006:13 1009:1	sign 1056:13	1010:2,12	1055:5 1056:20	1051:6 1058:22
1011:22 1025:10	1069:18	1011:22 1012:3	1057:14,18,21	sort 1032:11
1029:6 1031:25	signed 1070:23	1012:16,23	1058:2,5,11,17	1067:11,12
1036:6 1040:16	1071:8	1013:21 1014:9	1059:2,9,15	1068:13
1053:24 1065:24	significance	1014:16,22,25	1060:2,11 1061:8	sought 998:18
seek 1054:3	1037:11	1015:4,9,12,25	1061:17,21	1029:19
seen 1011:14	significant 1010:21	1016:15,20,24	1062:20,24	SOUND 984:12
1021:25	signing 1037:22	1017:1,4,6,10,12	1063:2,7,15	sounds 1067:18
sees 1032:23	similar 1009:20	1017:14 1018:6	1065:16,21	SOUTHERN
send 1002:1	simple 1017:14	1018:20,25	1068:16 1069:8	984:16
1011:23 1062:18	1033:20 1041:13	1019:24 1020:1	1071:1 1072:19	speak 1013:17
sense 1001:12	1057:8 1062:7	1020:12 1021:10	sir 990:11,19	1024:2 1031:23
1007:9 1066:6	simply 995:1	1021:15,22	996:15 1009:5	1036:14 1045:5
sent 990:2 1008:3	1017:15 1026:7	1022:8,11,20,24	1017:11 1022:7	1049:2 1060:6
sentation 1004:10	1026:12 1034:4	1023:1,5,17,21,24	1023:25 1027:5	speaking 1005:5
1067:2	1037:25 1063:23	1024:1,4,8,15,18	sit 988:13 1053:20	1007:12 1029:21
sentative 1049:10	1064:25 1066:7	1025:15,21,25	situation 1002:20	special 1033:17
sented 1028:24	Simultaneous	1026:19,23	1011:11 1040:4	1046:20 1047:2
senting 1020:15	1005:5	1027:1,5,10,14,16	1049:13	1047:14 1049:21
sents 989:7	sion 1002:8,15	1027:18 1028:1	situations 1018:17	1049:24 1052:20
separate 1032:17	sions 1054:14	1028:10,15,21	1057:7	1054:13 1059:21
1058:5	SIPPEL 984:24	1029:20 1030:10	sixth 1050:10	1062:6 1066:5,11
separately 1068:10	987:3,8,21,24	1030:16,22,25	SkyTel 1048:17,19	specific 994:12,20
ser 1050:19	988:5,7,11,15,19	1031:4,22 1032:4	1049:4 1069:1,16	1010:7 1013:9
seriously 992:6	988:23 989:3,6,9	1032:7 1033:6	1069:17 1070:1,5	1059:18 1064:5
serted 994:16	989:11,14,16,21	1034:7,11,24	1070:8,14,16,20	specifically
serve 1047:4	990:3,6,10,14,20	1035:6,10 1036:2	1070:22 1071:21	1005:24 1022:13
1060:13	990:23 991:4,9,12	1036:6,9,16,23	1071:22 1072:5,8	1024:11 1035:16
services 984:7,9,19	991:17,20 992:1	1037:3,6,19,24	1072:11,15	1036:15 1038:12
1015:13 1043:21	992:14 993:11,14	1038:19 1039:2,6	SkyTel-O 1055:7	1050:19 1051:4
1046:8 1050:17	993:18,21 994:2,9	1039:19 1040:2	slate 994:16	1057:5
1060:5	994:19 996:6,8,12	1040:15,21,24	slice 1049:12	specified 1051:19

specifying 1051:12	stick 1058:24	Suite 985:14	Taylor 1036:17	1003:10 1004:3
speculating 1013:11,14	sticking 1040:22 1042:6	sum 1069:3	Tech 988:25	1007:10 1011:25
spend 1033:4	stopped 1070:2	summary 1039:25 1054:15 1055:7	Technology 985:16 988:10 1009:23	1012:10 1042:10
spent 996:2 1006:20	story 1040:22 1042:6	1055:10,15	1060:4,23	1056:2,10 1059:6
spite 1060:22	straight 1040:17,19	1056:23 1057:6	teleconference 986:20	1063:10,20,21
spoke 1013:18	strained 1005:1	1057:23 1058:5	telephonic 1009:9	1067:3 1071:4
sponsibility 1050:17	street 984:22 985:9 985:13,21 986:4	1058:18 1061:23	tell 1000:12 1002:2 1002:3,3,4	1073:7
square 1004:22 1010:24 1011:1	986:10,13	1062:2 1063:18	1012:19 1016:24	things 1029:4
squarely 1068:6	1031:11	1066:22 1068:22	1030:16 1044:16	1031:5 1038:9
stance 1001:19	Stuart 986:3,13 989:19	1071:17	1066:25	1050:21 1063:25
stand 988:19 1052:3	stuff 1040:12	support 1024:21	telling 1000:13 1021:2 1053:18	1071:6 1072:25
standby 1050:6,8	sub 1001:18	supposed 995:2 1031:15,16	1057:14	think 992:12 993:6
standing 1007:21	subject 1004:19 1011:20 1029:12	1044:2 1053:17	tence 1064:2	994:12 995:3,18
standpoint 1065:24	1056:6 1064:10	sure 1024:14	term 1031:8	995:20 999:23
start 987:18,18 988:1,1,5 991:22	subma 1045:14	1071:12 1073:6	terminated 1017:17	1003:3 1007:21
995:3 1033:22	submit 1002:7 1068:14 1070:25	sustained 1014:13	terms 991:7 1034:20 1061:1	1009:18 1011:6
1042:19	1071:13	SW 986:10	1069:23 1071:15	1012:13 1013:5
started 1015:5	submitted 994:5 1021:20 1051:12	swers 1053:23	testi 1025:8	1015:17 1016:2
1043:25 1047:21	1071:25 1072:1	<hr/> T <hr/>	testify 1017:21,25 1018:2 1019:21	1018:22 1021:11
state 993:21 1017:13 1034:2,4	submitting 1071:24 1072:17	tactical 993:10	1020:4 1021:8	1021:25 1027:3
1042:22 1053:2	subsequent 1051:17	tainly 988:16	1025:5 1026:7	1029:20 1030:2,6
1072:14	subset 1035:13	take 987:17 994:16 1012:12 1013:12	1034:4	1031:10,12
stated 998:17	substance 1014:3 1025:18 1049:25	1016:19 1055:23	testifying 1009:15 1018:5,6 1021:10	1033:6 1036:13
1033:16 1047:23	substantial 1051:21	1059:5 1061:9	testimonial 987:15	1037:1,16 1038:7
1052:25 1053:25	substantially 1051:22 1052:2	1062:12,14	testimony 987:14 1018:15,18	1038:11,17
1054:24 1055:16	sufficient 1068:18	1069:17	1020:4 1021:8	1039:18 1040:12
1059:24 1061:2,4	sug 1027:7	taken 987:14 1027:20 1032:8	1025:5 1026:7	1041:7,10,21,25
1061:9 1065:3	suggest 1013:19 1032:25 1068:7	1068:10	1034:4	1042:3,4,7,14
1069:25 1070:4	suggested 1001:13	talk 1033:1,1 1041:2 1066:3	testifying 1009:15 1018:5,6 1021:10	1044:10 1050:5,7
1071:8,20	suggesting 1026:19 1026:21 1051:7	talking 1009:25 1013:5,11 1033:9	testimony 987:15 1018:15,18	1050:11,13,22
1072:12	suggestion 1031:21 1032:3,10	1034:14 1037:20	1027:20 1029:8	1052:7 1053:6
statement 1027:22 1036:22 1037:4	1067:21	1041:6 1043:20	1029:13 1031:17	1054:10 1056:14
1038:1	suggestions 1033:3	1043:22,24	1032:7 1034:14	1056:16 1058:14
statements 1037:11 1065:9 1068:8		1057:16	thank 987:7 988:11 989:5,14 1014:15	1060:7,25 1061:3
stay 1042:9		talks 1024:23 1070:22	1016:17 1027:15	1062:17 1065:20
stays 1050:2		tangle 1032:17	1047:17 1048:10	1065:23 1066:15
step 1005:8		tative 1047:5	1048:10 1059:8,9	1067:11 1068:18
Stern 985:19 989:1			1059:10 1061:19	1070:24 1071:3
			1073:5,9	1071:11,15
			thanks 988:24 1040:23	1073:6
			thing 997:13	thinking 1006:25
				thinks 1050:9
				Thirdly 1067:17
				thought 1002:24 1022:22 1027:6
				1033:23 1043:14
				1047:25 1057:25

1058:12 1072:6 three 1038:23 1071:16 throu 1053:23 throwing 1067:21 tial 992:24 ties 1067:14 Tim 985:11 990:2 1028:5,7 1043:13 1043:15 time 991:10,13 993:1 999:15 1010:1 1015:13 1017:16,17,17 1018:19 1024:4 1025:4 1028:23 1031:24 1033:4 1034:16 1039:15 1040:6 1041:9 1043:21 1044:8 1045:1 1046:25 1049:24 1053:13 1054:6 1055:8,17 1055:20 1059:23 1066:14 1068:21 1070:2 1073:7 time's 1065:24 times 1019:18 1034:10 1053:24 1054:2 1061:5 tion 998:19 999:20 1003:4 1011:21 1012:12 1015:13 1030:12 1034:6 1036:14 1038:14 1040:14 1043:1 1048:7 1050:4 1064:13 1071:14 1071:16 1072:13 tions 1007:23 1051:20 1060:5 tired 1043:8 1061:14 titles 1066:12 tity 1071:10 tively 1057:2 today 991:10,17	999:13 1001:17 1014:1 1017:23 1018:5,10,22 1030:22 1034:22 1039:12 1042:6 1053:10 1061:5 1065:2,9,18 1072:15 today's 990:24 told 1036:5 top 1010:25 topic 1028:13 1039:12 totally 1067:15 transcript 1027:13 1071:5 treat 1062:8 treated 1052:14 1062:9 trial 1052:9 tribunal 1011:10 tried 1041:5 trou 1001:22 trouble 1024:19 true 1047:10 1055:19,21 1059:24 try 991:9 1010:20 1033:7 1039:20 1061:12 1068:4 trying 989:22 1004:25 1006:21 1019:1 1026:12 1033:8,13 1037:25 1039:17 1039:22 1041:9 1045:14 1069:20 1072:11 tuned 1042:9 two 987:17 991:23 1022:8 1038:22 1042:12,12 1053:18 1058:5 1066:24 type 1031:17 1065:7 typically 1020:2	<hr/> U <hr/> ultimately 1038:23 1044:24 unable 1004:2 1020:25 unbundled 1050:17 1050:19 unclear 1048:18 understand 993:13 993:25 994:17,22 999:21 1010:12 1018:2 1020:6 1021:23 1028:10 1029:20 1031:5 1034:7 1037:8,11 1037:13 1038:16 1044:17 1053:1 understanding 992:2 994:11 1007:22 1018:9 1056:2 understood 1026:5 1053:3 undertaken 1034:3 unfortunately 1043:1 unilateral 1067:15 unrelated 1046:2 unusual 1022:1 unusually 1057:3 up-front 1055:4 1063:25 urge 1066:21 USA 984:10 USC 1017:25 1020:9 1021:5,5 use 999:2 1029:23 uses 1035:7,8 <hr/> V <hr/> vantage 1000:21 1008:7 variations 1024:22 Various 984:6,8,18 Vegas 1031:3 vens 1034:8 versus 1029:8	vices 1050:20 vidual 1067:7 view 1022:4 1054:17 viewed 1039:25 violate 1006:4 violating 1010:14 violation 1011:18 vised 999:17 visitation 1067:20 Volume 984:19 voluntarily 1019:14 1020:5 voluntary 1019:13 <hr/> W <hr/> Wade 990:1 Waid 985:12 989:25 990:5,7,9 1015:23,24,25 1016:1,17,19,23 1016:25 1017:3,5 1022:6,7,10,16,22 1022:25 1023:4 1023:14,19,23 1027:25 1028:2,2 1028:10,14,16,25 1042:16,18,21,25 1043:6,9 1050:13 1050:16 1052:13 wait 990:10 1007:25 1008:19 1022:20 1040:2 1044:19 1057:13 1058:17,17 waive 1016:5,14 waived 1035:25 waiving 1019:6 1022:18 1028:6 1043:2,11 want 987:8 992:24 993:9 994:12 1000:8 1002:11 1004:13 1005:8,8 1007:17 1008:15 1008:18 1011:20 1015:18,18	1016:4,12,15,20 1018:4,15 1023:21 1024:5 1025:10,11 1028:3 1031:14 1032:11,25 1033:1 1034:21 1038:4 1044:5 1049:22,23 1050:9 1051:11 1051:11 1052:16 1052:25 1059:4 1061:11,12 1062:14 1063:5,9 1063:21 1064:6 1069:9,14 1070:17 1072:24 1073:1 wanted 1012:21 1025:23 1026:3 1033:15 1039:2,3 wants 1000:10 1050:8 1051:16 1051:16 Warren 986:12,13 1070:23 1071:20 1072:1,13 Washington 984:23 985:5,10,14,22 986:4,10 wasn't 1040:14 1045:14 1055:19 way 987:18 990:3 997:1 1000:21,22 1005:19 1009:2 1013:13,20 1016:11 1023:18 1023:19 1024:24 1033:9,13 1040:17 1045:2 1045:23 1051:8 1062:13 ways 1001:14,17 1062:12 we'll 991:23 weather 990:6 1024:6
--	--	---	--	--

Wednesday 994:6 1061:4 1064:25 1065:8 week 1067:1 1068:15 went 1012:18 1059:12,13 1063:17 1073:5 weren't 1041:20 whim 1067:15 Wireless 984:7,9,19 990:13 WISCONSIN 984:14 withdraw 1046:6 withdrawal 1046:10 withholding 1066:19 witness 1019:4 word 1035:7,8 1054:1 1069:20 1070:20 words 999:2 1051:24 1056:20 1058:20 1061:9 work 996:9,11 1006:21 1031:14 1041:9 1043:24 1045:2 1047:21 1065:11 worked 995:24 1005:24 working 995:10 1054:6 world 1050:23 worried 1001:3 worse 990:10 996:17 wouldn't 1016:3 1072:16 wrap 1050:5 wrapped 1059:6,7 write 1009:11 writer 1040:11 writers 1040:9 writing 1032:14	1040:8 1068:15 written 1052:10 wrong 1038:17 1039:18 1058:4,9 1058:22,23 1070:4 wrote 1025:20,21 1025:22 1062:20 1062:21,25,25 1063:4 <hr/> X <hr/> Y <hr/> year 1024:9 1046:21 1047:15 1071:18 <hr/> Z <hr/> 0 <hr/> 0004030479 984:8 0004144435 984:9 0004153701 984:16 0004193028 984:9 0004193328 984:10 0004309872 984:11 0004310060 984:11 0004314903 984:12 0004315013 984:12 0004354053 984:10 0004417199 984:13 0004419431 984:14 0004422320 984:14 0004422329 984:15 0004430505 984:13 0004507921 984:15 0004526264 984:16 0004604962 984:17 0013587779 984:6 07-446 1050:19 <hr/> 1 <hr/> 1 1025:16 1060:3 1060:22 1.2 1050:17 1.301(a) 1072:4 1.5 1056:6	1.52 1037:17 1038:18 1042:4 1.6 992:9,25 998:8 998:9 1000:5 1006:4 1031:13 10:30 984:24 10:36 987:2 11 1024:11,20 1037:14,15,16,19 1038:18 1042:4 1056:7 11-71 984:3 987:10 999:18 12:14 1059:13 12:20 1059:14 12:40 1073:10 12th 984:22 986:4 986:10 13 1023:7 13M-19 1070:10 14 1055:18 1059:17 14th 985:13 1055:6 16 1056:21 1057:16 1057:25 1058:10 1058:14 1060:18 1601 985:21 17 984:21 19 1023:8 <hr/> 2 <hr/> 2 1070:10 20004 986:4 20005 985:14 20006 985:22 20007 985:10 20033 985:5 2012 999:12,14,14 1004:7 1045:7 2013 1024:9 1045:25 1046:22 1055:6,18 1056:21 1057:16 1058:1,10,14 1059:17 1060:22 1070:10 2014 984:21 1047:2 1060:19	202 985:5,10 986:11 202)778-9000 985:23 202)906-9572 985:15 202)942-6474 986:5 20554 986:10 223-2100 985:5 2506 986:13 27th 1072:20 28 998:9,9 <hr/> 3 <hr/> 3221 985:9 33428 985:4 338-3200 985:10 <hr/> 4 <hr/> 400 985:14 418-2393 986:11 445 984:22 986:10 <hr/> 5 <hr/> 5 1017:25 1020:9 1021:5 1035:2,15 1035:16 510)848-7797 986:14 555 986:4 555(b) 1017:25 1020:9 1021:6 <hr/> 6 <hr/> 6 1047:2 600 985:13 61 984:5 6th 1046:19 1047:14 <hr/> 7 <hr/> 8 <hr/> 8 984:19 8th 992:20 <hr/> 9 <hr/> 9 1023:8	94705 986:14
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This is to certify that the foregoing transcript

In the matter of: Maritime Communications, Inc.

Before: FCC

Date: 01-17-14

Place: Washington, DC

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